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RESTRICTIVE TRADE PRACTICES COMMISSION
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LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

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RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss-Leader Selling

Hearing held (in public) in the Conference Room, Dominion
Bureau of Statistics Building, Ottawa, Wednesday, 19th May, 1954.

PRESENT:

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.,
Chairman.
Guy Favreau, Q.C., B.A., LL.B.,
Member.
A. S. Whiteley, B.A., M.A.,
Member.

APPEARANCES:

Mr. N. W. Wickwire, Q.C.,)
and)
Mr. Paul Gerin-Lajoie) Counsel for the Commission
Mr. T. D. MacDonald, Q.C. Director of Investigation
and Research.

REPRESENTATIONS

Page

Canadian Manufacturers' Association
Represented by:

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H. W. Macdonnell, Esq.,
L. F. Fitzpatrick, Jr., (Sunbeam Corporation (Canada) Limited)
W. G. Cole, (Sunbeam Corporation (Canada) Limited)
D. G. Currie, (Charles E. Frosst & Company)
Willis George, Esq., (C.M.A. Ottawa Representative)

RESTRICTIVE TRADE PRACTICES COMMISSION

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Counsel for the Commission

Mr. T. D. MacDonald,

Director of Investigation
and Research.

THE CHAIRMAN: Ladies and Gentlemen, I am not sure whether the acoustics, with the large gathering which we have this morning, will be adequate to the occasion, but we will proceed, and if you have any difficulties in hearing what is said, please let us know and we will try to make some adjustments.

In the first place I would like to make a brief statement, which I think is desirable at this time. It has been prepared with a view to outlining how this enquiry came to be started, and to give some general idea of the purpose of it.

This being the opening day of hearings by the Restrictive Trade Practices Commission on the subject of "Loss Leaders", I think it is appropriate that I make a brief statement concerning the origin and general purpose of the proceedings.

THE origin of these hearings is to be found in the interim report of the MacQuarrie Committee made in October, 1951, the last paragraph of which reads as follows:

"As to the 'loss-leader' device, the Committee believes that it is a monopolistic practice which does not promote general welfare and therefore considers that it is not compatible with the public interest. However, we do not believe that it presents any immediate danger: extreme forms of price-cutting are not very likely in this period of inflation and relative scarcity. Moreover, we are convinced

"that there can be found other effective and more desirable methods of controlling the 'loss-leader' than minimum resale price maintenance. Present circumstances afford time to make a careful study of such methods and the Committee, therefore, does not think it imperative to make an immediate and hasty recommendation regarding that practice."

The recommendation implicit in the paragraph I have just quoted was acted upon by the Director of Investigation and Research under the Combines Investigation Act immediately after this commission was appointed in November, 1952. He at once began to conduct inquiries under Section 42 of the Combines Investigation Act into situations apparently involving the loss leader practice in a number of cities across Canada. The results of these inquiries and others of a more general character bearing on loss leaders have been consolidated and published in book form. The book contains a statement of the facts and information obtained by the Director on the subject of loss leaders affecting various commodities and lines of trade. The Director has submitted this material to the Commission together with certain supplementary information, including submissions made to him by interested parties, which, because of its bulk, it was impractical to incorporate in his statement.

It is now the Commission's responsibility to

consider this statement and the supplementary information provided by the Director, together with such other evidence and material as it may obtain during the hearings which are being begun this morning. No conclusions have been reached, nor will they be until these hearings are completed. Only after all the evidence and information the Commission is able to obtain on the subject of loss leaders is before it will any findings be made and a report thereon submitted to the Minister of Justice.

It is therefore desirable that any organizations, groups or individuals who have information which may assist the Commission in its consideration of the subject, and who have not already indicated their wish to present a brief, do so without delay, in order that suitable arrangements may be made to hear them. To assist in the preparation of their submissions those who have already expressed a desire to be heard have been supplied with a copy of the Director's statement.

The Commission will commence its proceedings on the basis of the material received from the Director, but it is anxious to obtain all available additional information relating to any aspect of the problem of loss leaders. The Commission has written to all those who it was thought would be interested in the subject, outlining in some detail various aspects of the practice of loss-leadering which might be dealt with in submissions made during the course of the hearings.

It will be recalled that in the paragraph quoted

a moment ago, from the MacQuarrie Committee report, the members of the Committee expressed the view that extreme forms of price-cutting under the conditions then prevailing were not very likely to arise, and, therefore, loss leaders did not present any immediate danger. The conditions the Committee referred to were those of inflation and relative scarcity. It is obvious that these conditions of scarcity and inflation no longer prevail in the Canadian economy. Certain trade groups and individual manufacturers and dealers have now alleged in submissions to the Director of Investigation and Research that loss leaders are now being employed or are likely to be employed in such a way as to constitute a danger to themselves and to the public for which remedies should be provided.

From representations made to the Director it is evident that the term "loss leader" when used by different people has different meanings, many of which seem to fall considerably short of that extreme form of price-cutting which the MacQuarrie Committee considered to be inimical to the public interest. It is the hope of the Commission that, as a result of these hearings, more definiteness will be secured as to the particular form of price-cutting for which remedies are sought, and as to how this should be defined.

It is therefore hoped that assistance will be given to the Commission to enable it to distinguish, first, those loss-leader situations or practices which have in them definite possibilities of seriously and

directly affecting the public interest in the maintenance of a free economy; second, those situations which, while they directly affect only the interests of the parties concerned, may therefore indirectly affect the public interest; and, third, those situations which may only reflect vigorous competition or innovation, where the public interest and the immediate interest of the parties concerned may be opposed.

As to the first, the Commission at this stage is not itself attempting to put forward any definition of loss-leader selling or to demark the situations or practices which would warrant consideration on the basis suggested by the MacQuarrie Committee. It should be pointed out, however, that the Commission is called upon to appraise practices from the viewpoint of their effect on the public interest, and it is therefore expected that the submissions made during these hearings will be so presented as to afford assistance in a consideration of the problem on that basis.

As to the second, much the same remarks apply except that in this case it is even more important that the submissions, in addition to showing the direct effect of loss-leader situations on the parties concerned, also throw light on the manner in which the public interest is thereby adversely affected.

As to the last, a notable feature of the Canadian economy has been the persistence of the element of change in all aspects of our economic development. This has been particularly true in the fields of production and distribution. In any consideration of

merchandising practices it is necessary to give due attention to factors which are brought about by the element of change itself. If we are to maintain a dynamic economy we must avoid the imposition of conditions which would stand in the way of or impede changes which are in the public interest.

With respect to all three kinds of situation or practice, the Commission is seeking factual data that is both accurate and as complete as possible. Only by such means can the Commission hope that the conclusions it may reach as a result of this inquiry will have a sound foundation of true and ample facts.

Following this week's hearings in Ottawa, arrangements have been made to hold similar hearings in Toronto beginning on May 31st and in Montreal beginning on June 7th, and subsequently in certain other major cities where the number of those in the district who have expressed a wish to make representations indicates this course to be desirable. It is anticipated that hearings will be held in Vancouver commencing on the 29th of June, in Victoria on July 2nd, and in Edmonton on July 6th, with hearings in Saskatoon and Winnipeg, if found necessary, immediately after that date. It is hoped that these dates will be noted so as to allow anyone interested in attending an opportunity to be present.

I wish to point out that it will take some months to complete hearings across the country. There is still time for organizations or individual persons to inform the Commission of their desire to present briefs or make representations. It is, however, strongly urged that we

be advised of such desire as soon as possible. Once hearings have been completed in a city, it will be very difficult to arrange for further representations from that area to be heard adequately, except during the course of final hearings to be held in Ottawa after the conclusion of hearings in other centres.

Following consideration by the Commission, it has seemed desirable that the hearings during this inquiry should be conducted in public, and I so order. If at any time the Commission should find it highly desirable that some particular portion of the inquiry be conducted in camera, an amending order may be made. In the absence of such amending order, all proceedings will be in public.

I thought it desirable that a statement of that nature should be made at this time before representations are actually begun in the conduct of this inquiry.

All of those who are interested, or who have been interested to the extent of indicating their desire to appear before the Commission and make representations, have been furnished with a copy of the statement of facts and information, a very substantial statement of facts and information, which has been prepared as a result of inquiries made by the Director of Investigation and Research. At this time, we, the Commission, think it might be helpful if the Director would make a brief summary of the material which has come into his hands. It may help guide those who are appearing before the Commission and help them in the

preparation of arguments which they may wish to adduce in addition to the briefs which are usually prepared in advance.

Mr. MacDonald, would you be prepared at this time to make a brief statement?

MR. MacDONALD: Mr. Chairman, and Commissioners, I suppose that this is an occasion which deserves some note in that I believe it is the first time -- certainly the first time within my experience -- when an inquiry under the Combines Investigation Act has been of such a nature that it could be held in public. The Act as amended two years ago provided for a different kind of inquiry than the inquiry which was directed to the investigation of a particular situation amounting perhaps to a contravention of the act; it provided for more general inquiries into economic conditions of a certain kind. This is such an inquiry, and that is one of the reasons I take it, why it can be conducted in public, and why the inquiry is being conducted in public today.

I had intended to say a few words about the background of the investigation. If I may presume to say so, sir, the very excellent summary which you have given I think makes that completely unnecessary. Perhaps I might just add that this inquiry springs from the resale price maintenance legislation very directly, in that when the MacQuarrie committee recommended the prohibition of resale price maintenance, a recommendation which was later adopted by Parliament, representations were made to the effect that the new

legislation forbidding resale price maintenance probably would have the effect of opening the door to an increase in the practice known as loss-leader selling. The MacQuarrie Committee then made the comments to which you have fairly fully referred, and recommended that when the new organization was set up, the new organization which the MacQuarrie committee was recommending to replace the existing internal organization in the Combines Branch, that a full scale inquiry of this nature be conducted in order to determine, as I remember the words, the prevalence and effects of the practice, and to recommend amendments, if necessary, to the Minister in order to deal with it.

As you know, sir, the re-organization became effective on the first of November, 1952, upon which date, replacing what was formerly the office of Commissioner, there came into existence the Restrictive Trade Practices Commission, which you are, and the Director of which I am, and it was to this new organization that the recommendations for the inquiry had been made. The inquiry was then commenced, I think I may say immediately, by the Director and staff starting certain investigations. The purpose of this inquiry was to get as much information as appeared to be forthcoming at this stage, relating to two main aspects of the problem: first to get as much expression of views as to the nature of the practice, as to the prevalence of the practice and as to the effects of the practice; and secondly to get as much information as possible of a statistical nature relating to actual

cases of loss-leader selling.

I should like from now on to go to this book of information which has been prepared and to follow the subsequent course of the inquiries which were made by the Director and the Director's staff by the pattern of chapters in the book. I think I should remark at this stage that the compilation and the gathering of the information that is contained in this book, and which, if I may say so, is as full as the circumstances between that time and this permitted to be gathered, was prepared and compiled under the very competent immediate supervision of Mr. L. A. Skeoch of the staff of the Director of Investigation and Research.

The preface and the introductory chapter I think I may now skip because they have been pretty fully covered, and I shall go on to chapter III, but perhaps I should read first one or two lines from Chapter II, because Chapter II deals in a general way with the definition and the characteristics of loss-leader selling, not from the standpoint of the information that was gathered by us but rather from the standpoint of the existing knowledge in the field, the existing expressions about the nature of the practice, and it will be interesting perhaps to see how they may be borne out or differed from by the material actually collected. It is pointed out that the various definitions of loss-leader selling do have one thing in common: that a loss-leader is one which has a cut in price. That, of course, is the leading characteristic

and one authority on the subject has said that generally loss-leaders are goods sold either below cost or at such a low percentage of mark-up as would not, if applied to all lines, cover costs of operating. The term is often extended to goods that are simply sold at prices below the usual market. Another definition by another person who has given study to the subject, brought in the idea of stimulating sales not only of the leader itself but of other commodities, where he said:

"In its broadest sense the loss-leader is merchandise featured or sold at reduced prices for the purpose of attracting customers and thereby stimulating sales not only of the leader but of other commodities."

I think I shall not refer further to Chapter II but I should like now to go on to Chapter III which gives a very brief historical reference to the subject. Perhaps it is not completely necessary but I think it is interesting to look at the paragraph on page 9 which perhaps puts the matter in some perspective. It is an extract from a newspaper in 1765 in Connecticut, and it reads very much like some of the fears and the opinions that have been expressed in the course of the information that we have gathered to date. The extract is self-explanatory. This appeared in the Connecticut Courant of August 26th, 1765:

"All persons indebted to us the Subscribers, either by Bond, Note or Book, are hereby

"notified and cautioned to beware of repeated, pompous advertisements, inserted in the Connecticut Courant, signed, Thomas Davidson & Comp. wherein they insinuate to the Public, that they import their Goods immediately from the Makers -- which let them believe, who will -- Consider with yourselves whether a Company advertising selling trifling Articles, at prime cost, or less, will serve you with other things not so commonly known at the same Rate; or whether 'tis not an Allurement to get a greater Advance where it may be laid, without Discovery, by which possibly many may be deceived."

That paragraph of several hundred years ago carries the substance of many of the comments and many of the expressions of opinion which have been received even at the present date.

Then there is an extract from the much more recent publication of Mr. C. L. Burton, C.B.E., in his book "A Sense of Urgency".

I think that is all that I need refer to in Chapter III except perhaps this point that Chapter III adds one further consideration to the subject in pointing out that in some respects modern merchandising methods have given an impetus to the tendency to reduce prices in certain lines in that large fixed costs are established whereby the merchandiser is in many

cases willing or anxious to reach out for certain lines which while they do not give him the return that he has been receiving on his ordinary lines will nevertheless make a contribution to his fixed costs. That point I think is brought out fairly well in Chapter III.

Now we go on to Chapter IV. The first three chapters being general, Chapter IV is now getting us into the meat of the inquiries that were made by the Director and the Director's staff. I am now on page 13, but lest you become apprehensive I may say that my rate of progress so far, in only getting up to page 13, is no indication of the time I propose to take because from now on I hope to travel faster through the pages.

As one of the first steps in this survey, the Director, on November 4, 1952, sent out an inquiry covering twelve major points relating to the nature and effect of loss-leader selling, to a large number of individual firms, to trade associations and to consumer, labour, co-operative and farm groups, and there were further letters of November 7th, 1952, and later in April, 1953, and, in addition to asking for general views upon the nature and effects of the practice, these communications asked for as much information as possible relating to exact or concrete instances of loss-leader selling. This questionnaire was so important, both in commencing the investigation or the inquiry, and also in the points that it raised, that I think I would be justified in referring to it at a little length. Therefore, I am going to turn

to page 65 in the book and I am going to run through very briefly the nature of the questions that were put. The first question naturally perhaps raised a matter of definition. This is what the persons who received the questionnaire were asked:

"What precise definition (or definitions) of the term 'loss-leader' do members of your organization employ. If any of these involve the matter of 'cost', please indicate clearly what type of cost is meant, e.g., invoice cost, specific handling costs, average handling cost, etc."

That was obviously an attempt to reach some kind of definition to which the different views could be attached, not necessarily a common definition, but perhaps I should put it in this way: in order to appreciate the views that were being expressed it was necessary to know exactly what the person was talking about and what he meant, what he was interested in, when he talked about a loss-leader.

Secondly:

"How the 'loss-leader' practice can be distinguished from such well-recognized merchandising practices as the clearance of damaged goods, surplus stocks and end-of-season stocks;" etcetera.

Thirdly:

"Whether there are certain classes or types of goods that are particularly

"subject to use as 'loss-leaders', and, if so, what their characteristics are."

Fourth:

"Whether purchasers are deceived by 'loss-leaders' into believing that most other goods sold in the store are also offered at corresponding reductions."

Five:

"How 'loss-leader' selling differs from alternative means of accomplishing, at the same cost, the same sales results such as advertising" etcetera.

Six : "Whether new customers attracted by

'loss-leaders' are likely to be retained, or whether the continued use of 'loss-leaders' is necessary and sufficient to obtain their future patronage."

Seven:

"Whether 'loss-leaders' are more commonly used in central or downtown market areas than in the outlying scattered market areas."

Eight:

"Whether 'loss-leaders' are more usually introduced and regularly employed by one category of retailers than by others."

Nine: "Whether, if large merchandising organizations engaged in competitive 'loss-leader'

"selling, the efforts would tend to be self-defeating and likely to deprive the practice of its drawing power."

Ten: "Whether it is possible to give any quantitative estimate of the significance of 'loss-leader' selling..." etc.

Eleven:

"Whether the use of products as 'loss-leaders' tends to curtail the market for them or permanently damage their reputation with consumers..." etcetera.

Perhaps I might pause here to point out that in this, which was really an endeavour to try to narrow down the ground as much as possible to see what uniformity of views there was, some of the questions relate to the interests of the consumer, some to the manufacturer and some to the distributive trades. For example, question 11, which I have just read obviously relates chiefly to the interest of the manufacturer, whether the prestige of his product is likely to be damaged by the loss-leader practice.

Twelve:

"Whether 'loss-leader' selling results in the concentration of merchandising in fewer hands or limits the opportunities of independent firms, and whether any such consequences can be traced directly to the 'loss-leader' practice."

Now it is difficult to differentiate in degree of importance among those questions. They all bring

out important aspects of the matter. Without attempting to make any comparative appraisal I should like to refer to No. 1, raising the question of definition, No. 5, how loss-leader selling differs from alternative means of, let us say, advertising, No. 11, whether loss-leaders damage the prestige of the goods concerned, and No. 12, whether they result in the concentration of merchandising in fewer hands, as of perhaps particular significance.

Now, Mr. Chairman, in the chapter which follows, the replies to those questions, all twelve of them, are summarized, and perhaps the leading characteristic of the section is the broad variety of views which it discloses. I am not going to attempt to summarize them now, of course, although I think it would be well, just as an example, to take one question and just glance through, as an illustration of the variety of views which were forthcoming, what was ascertained. Perhaps the best question would be that relating to definition:

"What precise definition(or definitions) of the term 'loss-leader' do the members of your organization employ".

Going to page 16, and beginning with the Summary, a manufacturer, for example, expressed the view:

"We would define a loss-leader as being a product offered for sale at a price which provides the seller with less than his usual margin of profit where such offer for sale is made mainly for some other

"purpose".

By way of parenthesis here, perhaps I might refer to page 15 and to two expressions, one from the men's wear industry -- this is from the manufacturer's side -- and another from a manufacturer of cotton and woollen knitted wear. The men's wear manufacturer said this:

"In our opinion the loss-leader item
does not enter our picture at all."

And then the manufacturer of woollen knitted wear and cotton wear said:

"Furthermore, so far as it has been
reported to us, the merchandise which
we manufacture has not been made the
subject of such a practice."

It would appear from that that the questionnaire did serve one of its intended purposes, by narrowing the territory in which loss-leaders appear to be of particular concern, narrowing it without attempting to be exhaustive at the moment, bringing it down to such areas as electrical appliances, groceries and hardware, although I think in the latter case the complaints sprang not from quite the same cause as in the other fields, but rather from what were complaints of the undesirable practices relating to coupons and premiums and the use of hardware articles as premiums in other fields.

I have got away a little from my main purpose which was to run through some of the variety of opinions as to the definition of loss-leader selling. Summing up the manufacturers' reaction, it is said on page 17:

"Generally, the manufacturers that attempted to formulate a definition took the position that any price lower than that required to return a normal profit or lower than the prevailing price was a 'loss-leader' practice. Those holding other views were in the minority."

If we may slip over then to page 28 we come on to the replies made by trade organizations, and taking a passage from that section, all the definitions submitted by trade associations with one exception agree on the central feature of a loss-leader sale, namely an article sold at something below the normal price or below the price that would yield the regular mark-up for the product in question. That one exception said:

"Our definition of a loss-leader item is an article which has been bought with the intention of selling it at less than cost."

The wide variety of views is already emerging, although we have covered only part of the chapter.

Then perhaps we might slip over to page 37, where we come into the replies made by the chain stores. The chain stores for the most part defined a "loss-leader" as the sale of a product below landed cost which they interpreted to mean net invoice cost plus freight and duty, if any. If we go to page 44 in the returns made by department stores, from which eight replies were

received, in four cases "loss-leader" was defined as any item offered for sale at a price below its landed cost to the retailer. Again to page 52, which I think is the final grouping of replies received from individual wholesalers, co-operative societies, individual retailers, consumer co-operative societies, farm groups, consumer groups and labour groups, one interesting reply was made by an electrical appliance dealer who said this:

"Your bureau should be able to establish the average, or lowest, cost to do business in different classifications and this should form a basis as to what is a 'loss-leader'."

He was there interjecting a somewhat new idea into the discussion.

Now, Mr. Chairman, and Commissioners, I think from what I have read the fact of the variety of replies and views will have emerged, and that is not restricted to the first question. You will find a wide variety of opinions upon the different questions placed in the rest of the questionnaire.

That finishes Chapter IV and we now go on to Chapter V. Chapter V covers a considerable number of concrete cases of alleged loss-leaders which were reported, chiefly by the National Foods Division of the Retail Merchants Association of Canada. I think I may say that far and wide throughout this inquiry the response and the degree of co-operation received from all parties was very good. Some parties found themselves

in a better position than others; some found it very difficult to supply the information, but I think that generally there was a pretty fair attempt to send in as much information as possible, and perhaps pre-eminent among those was the National Foods Division of the Retail Merchants Association of Canada when they sent in this considerable number of concrete instances at some inconvenience to themselves. My comparison, by the way is certainly not invidious there because as I say other groups also co-operated I think to the best of their ability, but we did get a large number of actual cases, which we were particularly anxious to get, actual identifiable cases, from this Association. In each case the department tried to get the facts of the selling prices and the buying prices, the degree to which price reduction had occurred in the selling price, and the results are summed up on page 72.

There was a return, in this particular class, of 45 items; that is 45 items in which the Branch was able to run down the actual facts in each case, go to the manufacturer and find out what he sold for, or go to the retailer and find out what he bought for; go to the retailer and find what he sold for and what was the reduction in price and what was his percentage of profit. Of these 45 items sold in grocery stores, 8 were sold below net purchase cost. Of these, 4 were sold in chain stores and 4 in independent outlets. The reductions below the net purchase cost of the four grocery items sold in chain stores were 5.3 percent, 7.4 percent, 10.1 percent and 19 percent. A total of 37 grocery

items were sold at or above the net purchase cost, 2 of which were sold at net purchase cost.

Then I want to skip several lines and read this:

"The 32 items sold above net purchase cost in chain stores carried mark-ups above net purchase cost varying from 1.3 percent to 24.2 percent, the average of these percentages being 7.4 percent. The three items sold in independent stores carried mark-ups above net purchase cost varying from 2.6 percent to 8.7 percent, with an average of 4.7 percent."

To my mind that is a very interesting chapter because it shows the distribution of these price reductions over the distributive field of grocery merchandising, and it also indicates the wide range about which different people talk when they use the expression "loss-leader" or "deep price reductions". For example you will note some of the articles that were reported within this group as being cases of loss-leaders still carried substantial mark-ups. The chapter I think illustrates this very well that the practices there complained about -- I am saying nothing about the seriousness or otherwise of the extent of the practice -- would not be dealt with, would not be met, by anything which was directed towards controlling instances of sales below net purchase cost. That of course runs throughout the compilation of material; that is, most of

the complaints received relate not to the area in which the articles are sold below the net purchase cost of the retailer, but they fall in the area where he is selling above his net purchase cost but at a price which is considered to be less than sufficient to bring him what the complainer believes is a reasonable return. That may differ from area to area. I intend to refer a little later to a case of some importance where it was definitely in the area of sales below net purchase cost, and it relates to bread. The sales in this case were definitely in the area of articles sold below the cost to the retailer himself.

I think that covers the chief significance of Chapter IV and Chapter V, and we may go on now to Chapter VI. Chapter VI relates to replies to the questionnaire on 'leaders' and 'specials' in the merchandising of grocery products, and it is explained that in the replies received to the general questionnaire -- that was the twelve point questionnaire to which I referred -- on ^{the} nature, frequency of use and effects of loss-leader selling, it was clear that one field in which it was felt by the smaller merchants engaged therein, or, more precisely, by the associations representing them, that loss-leaders were used very frequently and were offered at large reductions below the regular price was the grocery store field. It was furthermore claimed that within this field "loss-leaders" were used most frequently and at the most severe price reductions by the chain stores. Indeed, in an

endeavour to find out their practice in respect of loss leaders and price reductions, question 6 of this questionnaire related to the period of the past months and requested information on nationally advertised or standard brand articles sold by the chain in question above net purchase cost. Only one firm provided specific information in reply to this question, and this chain store reported that during the past month it had sold three items below the regular shelf price but above net purchase cost.

Perhaps I should remark that this chapter is divided into two sections, one dealing with the small local chains and one with the larger, and we are now on the first of the two sections.

Question 7 asked for the same information in respect of private brand articles. Very little specific information was received in the answers in this part on this point, in part perhaps because private brands are of minor importance in the smaller chains dealt with in this group.

Question 8 related to the number of nationally advertised or standard brand articles sold at or below net purchase cost and information was requested for each such item under the four headings noted above -- that is relating to the buying price, the selling price and so on. Only one specific article was reported as being sold below net purchase cost and this item was reported by one chain store only. Five chain stores reported that they did not sell any private brand item at such a price during the period in question

and the remaining chains did not reply to the question.

Then if we skip over to the larger distributors which are dealt with at page 80, and I am going on to page 83, in reply to question 6, Table I, which is on page 84, lists 46 items which were sold above net purchase cost but below the regular sale price. Then going on to page 87, question 8 referred to the number of nationally advertised or standard brand articles sold at or below net purchase cost and requested for each such item information on the four points set out above, that is buying price, selling price, etcetera. Three chains reported that they had sold no such article at or below net purchase cost during the period in question. In the case of the two remaining chains one item was sold by each at less than net purchase cost, and in both cases special circumstances accounted for the sale.

Question 9 referred to the sale of private brand articles at or below net purchase cost. Four companies replied that no private brand article had been sold during the period in question at or below net purchase cost.

I think I need not refer further to that chapter except to say that it again emphasizes what I said a few moments ago that the area of complaint appears to relate mostly to articles not sold below the actual cost to the retailer but sold somewhere above that, but at a mark-up which the person complaining represents to be an unjustifiably low mark-up. That emerges, for example, if you take the time to look at the

proportions between the number of leaders, let us call them for a moment, that were reported by the chains as falling in the category of articles actually sold below cost, and the number that fell into the category of those sold above cost but at some reduction slight or great, below the ordinary shelf selling price.

Now, we have come to Chapter VII. In addition to the general inquiries sent out by the Director's staff, an attempt was made to take advantage of any unusual situations that occurred and that appeared to offer a particularly good opportunity of getting information about reduced prices. There are several of these mentioned in the following pages. One occurred in the City of Montreal where the papers indicated that there was going on in that city what is sometimes referred to as a price war, which is a term of somewhat vague meaning. However, observing this, the Director's staff then sent out inquiries to the drug stores concerned in Montreal in an endeavour to find out how extensive were the price reductions, both in connection with the things that they applied to and in the extent of individual price reductions. In order to obtain further details bearing on the extent of the price reductions and if possible upon their effects, a questionnaire was sent out to 180 retail druggists in the City of Montreal and replies were received covering a total of 77 drug stores. Now it may strike you at first glance that the disparity between 180 and 77 was quite substantial, but I believe that for returns to statistical

enquiries like this, this response may be considered fairly to be very, very good; in any case a considerable volume of information was disclosed. Of the 57 drug stores reporting price reductions, 7 although listing some articles as being reduced in price, did not state the exact number so offered, 3 reduced prices below net purchase cost only but did not offer any item in the range set out above -- that is the range of above net purchase cost but below ordinary mark-up -- and two stated that they had reduced prices on cigarettes alone. The remaining 45 drug stores offered the following number of items at less than the suggested list price but above net purchase cost, and then there is a tabulation following of 45 drug stores. Then reading on to page 101, the remaining 45 drug stores offered the following number of items at less than the suggested list price but above net purchase cost, and the total is set out in the Table. Then at the bottom of page 101 it says:

"The remaining 26 drug stores offered the following numbers of items at less than net purchase cost."

There again I think that support is given to the view that the majority of the complaints relate to the area of articles sold above cost but below the ordinary mark-up.

I should like now to skip forward to page 114 where the information obtained about the Montreal situation is briefly summarized. Obviously it is not possible in this survey, that is of the Montreal

situation, to isolate the different factors which in addition to price reductions may have influenced the sales records of the different drug stores. However insofar as any inferences may be drawn from the Montreal experience it would appear that inconclusive as the evidence is in some respects, it does suggest one conclusion, that those drug stores who offered and advertised price reductions did not experience any substantial increase in sales at the expense of the drug stores which did not reduce prices. Factors other than price reductions clearly played an important role in determining the sales record of the various competing groups. We will come later to sections on Cigarettes and Bread, and it will be interesting at that stage to compare the results with the results indicated here in the drug trade.

I would direct your attention briefly now to page 116 as a further illustration of the fact that the area of complaint -- perhaps I am dwelling on this a little unnecessarily but I think it is important to bring it out -- is not essentially goods sold below cost to the retailer, because if you look at the three items -- and I take them on page 116, just selecting these at random -- Alphamettes, Absorbine Jr., and Ayerst Cod Liver Oil, you will see in the second column from the right that the range of percentage mark-ups on cost which was taken in the instance complained about was from nil to 25.4 percent, and that the range of percentage reductions from regular price was 37 to 40 percent. Now if I read those statistics correctly

it means that the person who has taken the 25.4 percent mark-up was still limited to the range of percentage reductions in the right hand column, so that the most he could have reduced his suggested price was by 40 percent, leaving still a 25 percent margin of mark-up in cost. I am not saying that with any reference to the amount of the mark-up, I am not interested in that and I do not want my remarks to be misconstrued; I am simply saying it to bring out that these instances falling within the scope of the price reductions in the Montreal price war do definitely relate to that area of sales, or most of them do relate to the area of sales that are above net purchase cost and below shelf price, rather than to the area which is below the cost to the retailer.

Similar results follow in the case of Absorbine Jr., and Ayerst Cod Liver Oil, and I believe from some of the others in the paper.

I think I can come now to Chapter VIII on page 143 which relates to a survey of newspaper advertisements of grocery products for the month of January, 1953. The purpose of this chapter was to take another sort of cross-section of trade in an endeavour to find out what was the extent of the price reductions. It occurred to the director's staff that a useful way of doing that would be to look at the advertisements which were appearing for a definite period in leading papers of leading Canadian cities and compare the prices that were being advertised with the prices that we knew from our files to be the average prices at

which similar goods were bought and sold. Therefore in order to ascertain in a general way the number of grocery items that were being advertised, (1) below the usual selling prices in effect in chain stores and (2) at or below the average chain store net buying price, a survey was made in four cities of newspaper advertisements inserted by integrated chains, associated retail buying groups, and other retailers during the month of January, 1953. Now we go to page 146. Perhaps the most interesting aspects of this survey of newspaper advertisements of grocery products are these: the difference in the number of price reductions advertised in the four cities, a considerably different pattern occurring from one place to another; secondly the marked degree to which all advertisers participated in the price reductions; three, the very limited number of items sold below average net buying price; and four, the limited number of cases in which competitive under-cutting of prices apparently occurred. Perhaps the significance of that last statement does not spring immediately from the paragraph. It means this, that in most of these cases it appeared to be a case of one merchandiser deciding he would make a price reduction and advertising it, rather than somebody starting it off and the other merchandisers following him along at reduced prices.

May we go back just for a moment to pages 144 and 145 just to take a sample of the results. The Toronto advertisements yielded 28 separate items offered at less than the average regular shelf price

but above the average net buying price. Then on page 145 at the top in these same advertisements there were four items offered at or below the average net buying price. The proportions there insofar as that is representative, would be 28 to 4.

Now we go on to Chapter IX which relates to a survey of price reductions in the sale of household electrical appliances. This was another example where it was represented to the Commission or represented to the Director that price reductions were of particular prevalence and significance for the time being in relation to small electrical appliances, and we tried to take advantage of the situation to find out as closely as possible what was going on in that area. I think I should perhaps say that this chapter relates more to the ordinary store, or to the practice of the ordinary store handling electrical appliances than it does to the large merchandiser who has set up what is sometimes called a discount house or who has acquired a great volume of trade on the basis of his reduced prices. That is a somewhat different story and will appear, I hope, as the inquiry proceeds.

During the summer months of 1953 the Director from time to time received complaints from both retailers and manufacturers of household electrical appliances about the frequency and the extent of price reductions being made by the retailers on many items in this field, the complaints coming both from small as well as large cities, most frequently referred to conditions in the larger metropolitan centres such as

Toronto, Montreal, Winnipeg and Vancouver. In addition to these complaints from individual retailers and manufacturers, the Director received representations from the Ontario Association of Radio, Television and Appliance Dealers Incorporated on the same subject. In an attempt to obtain information on the extent of price reductions in this field, a questionnaire was prepared and circulated in September, 1953 to 174 retail dealers in household electrical appliances.

Then going to page 148, 50 completed questionnaires were returned, of which 44 were from independent and 6 from chain stores. Of 32 independent retailers selling at reduced prices, 19 replied in a specific fashion to question 5b relating to the number of different items which were sold below the manufacturer's suggested selling price but above net purchase cost. Of these 19, 5 reporting on six outlets, stated that all items were sold at reduced prices and one independent stated that 90 percent of all sales were at reduced prices. The remaining 13 replies provided the following information and you have a list on page 150 of the number of different items sold below the suggested selling price but above net purchase cost.

Then going on to page 151, to the number of items sold at or below net purchase cost, in reply to this question, 5 Independent retailers reported a total of eight appliances; no chain store reported any sales below net purchase cost. That again brings out the point; perhaps I should not dwell upon it longer as I think it is sufficiently made, that the substantial

area of complaint lies in the region above the net purchase price to the individual.

If you turn to page 159 for a moment there is a Table showing the percentage mark-up in cost taken on the different types of electrical appliances offered at reduced prices. The right hand column shows the percentage mark-up on the cost taken on the article on the basis of its reduced price and further indicates or illustrates the point to which I have referred.

I should like then to go on to page 163 and to sum up in this way: to the extent that any inferences can be drawn from the sales data collected in this particular phase of the inquiry -- and this relates to the sales experience of the stores that reduced prices compared with those that did not put price reductions into effect -- the basis of which is in some cases not too broad, it appears that the independent stores which reduced prices experienced the largest and most stable increase in sales in 1953 over the 1952 seven months average base of the three groups included. The index for the independent stores that did not reduce prices is based on a small number of reports and displays more extreme fluctuations than the indices for the other two groups, but it also indicates a considerably better sales record in 1953 over 1952 than was the case with the chain stores, although falling short of the sustained high level of sales reported by the independents that reduced prices. The chain stores that reduced prices also experienced marked fluctuations in sales in 1953 and in contrast to the other groups saw their

sales for all but two months in 1953 fall below the seven months 1952 average.

If we slip forward then to page 166 there is an interesting fact disclosed by Table VIII which shows that of 76 types of appliances reported upon as being the subject of price reductions, 37 of those were the product of a single manufacturer. In fact, the 37 is increased to 40 by the addition of the fourth item, Hotpoint, which is a brand of the same manufacturer. There is no evidence contained in this compilation of material to show why that should be so but I believe that the manufacturer in question will be making representations, and that is a very interesting point upon which I would hope he will bring all the information he can to bear.

That I think sums up in a sufficiently comprehensive way that chapter and brings us on to the chapter relating to Cigarettes. This is on page 205. This is a chapter upon which I have put in a great deal of time, but I know that you, Mr. Chairman, and Messrs. Commissioners, are fairly well acquainted with the contents of the chapter, and therefore, I will deal with it fairly briefly. The chapter brings out for one thing a fact that is latent in the situation relating to other products, and brings it out perhaps a little more clearly, that selling prices are the other side of the penny from buying prices, and that sometimes what appears to be a sale at a loss may be a sale based upon a lower buying price. It is also important I think because it throws considerable light on the

effect upon general sales of the sales of one particular product.

If you will look for example at page 217 there is a table there, the net effect of which I think is to show that as the result of a price reduction on one particular item, in this case, Cigarettes, whilst the sales of that particular item advanced very substantially the general sales did not advance in anything like the same proportions. That lesson is further borne out by the Table on page 218 which relates to a later period in the history of the price reductions where the Cigarettes sales have stabilized at an index of 139 and general total sales have stabilized at an index of 124. If you then go back and look at the first Table and note the increase in overall sales that had been occurring over a considerable period, the increase in overall sales because of the increase in cigarette sales becomes dubious, that is the amount of it that can be ascribed to the increase in cigarette sales and the movement of cigarette prices. I am referring to the index which is moving as follows: 108, 112, 120, 123, and 124. The passage summing up his experience says:

"Cigarette sales during these two periods fell off markedly from the peak reached in the period ending March 24th, 1953", which was the period of the price reduction, or which was the first four weeks of the price reduction;

"although they remained approximately 39 percent above sales in the base period.

"Despite this falling off in cigarette sales from their peak level, total sales continued to expand above the levels reached in the period ending March 21st, 1953, thus lending support to the conclusion reached on the basis of the earlier data submitted that the reflex effect of cigarette sales on the sales of other products was probably small."

Then if you go to pages 230 and 231, the same experience, although perhaps even more so, develops from Vancouver, where, looking at page 231, the total sales are back to 100 percent, to an index of 100, on May 30th, 1953, after having reached a peak of over 1,000 in March and April 1953. Cigarettes have gone back to an index of 438 while total sales have gone back to an index of 100, so that in sustaining that index of 100 there must be an element of increased cigarette sales in there. This chapter, as I have said, contains considerable information about the attempts of independents to obtain better buying prices, and their unsuccessful experience in that regard. That information is supplied and put in as being relevant to the situation, and rounding it out; it is not put in by way of criticism.

I think that that deals sufficiently with the cigarette chapter. Instead of spending a considerable amount of time upon it, we are spending a fairly short amount of time, but I think that unless you want me to

dwell upon it further I should now pass on to Chapter XI, "Loss-Leaders and the Prices charged on other items in the Seller's stock". I can summarize that chapter very briefly by saying that some of the views held were to the effect that in certain sectors of trade the loss-leader or the price reduced article was counter- balanced by corresponding increases in the prices charged on other lines; that is that it was a method of unfair or misleading advertising in that the person was induced to go into the store to buy with a loss-leader or an article at a considerably reduced price, and then advantage was taken of his presence to sell him other articles at a higher profit than the price he would have had to pay in other stores. This chapter would indicate that in the grocery field, whatever the situation in other fields, that would not apply, because there appeared to be no tendency on the part of the stores going in for the practice of loss-leaders or deep price reductions or price reductions, to show on the other articles a higher mark-up than stores which did not practice such price reductions.

Page 278 concludes a new chapter which is of particular interest to the hardware trade. I think that the chief complaint or one of the chief complaints from this section of the trade related to the use of articles ordinarily dealt with in one class of stores being adopted as coupons and premiums by some unrelated trade. For example, a hypothetical case, a grocery store offers anybody who buys a ten dollar order of groceries, a hammer for ten cents, a hammer

which ordinarily costs from \$1.00 to \$1.95. In this case the hardware man says that is a very unfair practice. If you want to have some scheme like that use one of your own products, because you are impinging upon my trade and you are creating unfairly in the minds of the buying public, the impression that since you can get that hammer for ten cents in connection with your ten dollar order of groceries, I am overcharging when I charge a person a \$1.00 to \$1.95 depending upon the quality of the hammer. I think the case is fairly summed up in this chapter, although at the end of the chapter we say:

"In any case the essential aspects of these practices extend beyond and in many respects differ from loss-leader selling. It has therefore been considered desirable to exclude them from (and hence avoid confusing them with) this inquiry into loss-leader selling."

I imagine frankly that is a statement with which certain sections of the trade may not agree and to which they may take exception. They may entertain the view that these things are very directly related to loss-leader selling, and if that is the case I presume that they will be coming before you and submitting their views and their information. You will, of course, entertain those views and judge their relevance to the terms of reference without certainly feeling bound in any way by the observation in this chapter. However, that was the way that it appeared to us at this stage.

Now I am coming to the end. We, in the Director's Branch considered that it would be valuable to try to find out something about the United States experience in this field, so, there being approximately 30 states where they have fair trade legislation, legislation prohibiting sales below certain minimum prices -- I should not call it fair trade legislation for a reason which I will refer to in a moment -- directed letters to the Attorneys-General of those states, and I must say that the response was very good and very kind. About 18 replied extensively with their experiences and they covered quite a wide field, some of them said that enforcement of the legislation had met with little success while others indicated that by means sometimes other than prosecution some considerable degree of enforcement had been obtained. Those various views or various experiences are all set out in this chapter. The nature of the legislation may tend to be a little confusing and perhaps it would not be out of the way for me to say just a short word about this kind of legislation. In general such legislation applies to wholesalers and retailers and establishes a minimum price on the basis of the cost to the individual dealer. The point I want to make is that we are now talking about minimum price legislation in thirty states, not to be confused with the question of the "fair trading" laws in the 45 states, which is related to the McGuire and the Sherman Acts. The nature of the legislation about which the Attorneys-General were asked was: Such legislation as

applies to wholesalers and retailers and establishes a minimum price on the basis of the cost to the individual dealer. In one type of Statute the cost of doing business, which is to be added to the invoice or replacement cost of the retailer, is generally stated, in the absence of proof of a lower cost, as a certain percentage mark-up, in many cases 6 percent, but in other cases 8 percent and even 12 percent, and as a certain percentage of the wholesaler's invoice or replacement cost, usually 2 percent. We had replies from 18 of the states, and one Attorney-General, or his agent, or the bureau to which he referred the matter as being the enforcement bureau, said:

"The inhibitions of the Act have not appeared to be effective."

Another said that enforcement by prosecution was almost impossible and others went on to say that by means, sometimes prosecutions and frequently means falling short of prosecution, a satisfactory degree of compliance had been obtained.

Just while I am on that point in case there is any misunderstanding relative to the legislation, in case my reference to 30 states may have been a little confusing, the picture, as you know, sir, and Messrs. Commissioners, but which all the parties interested may not be completely aware of is that this legislation about which I have just spoken is in effect in approximately 30 states. 45 is the number of the states in which there is state legislation providing for the effectiveness of the amendment to the Sherman

Act, that is for the manufacturers themselves to fix the retail prices of their product. The two fields are allied. They are slightly confusing but they are really independent fields. In other words, the McGuire Act has said that the Sherman Act is relaxed to the extent of permitting state legislation limiting prices for the sale of various products, and 45 States, excluding Texas, Missouri, Vermont and the District of Columbia have passed such enabling legislation. This legislation is not connected with the manufacturer setting the price for his goods, but prescribes minimum prices for the sale of various products.

Now I have finished except that there is some information which came in later which I would like to submit in conclusion on this matter, and it relates to reductions in the prices of bread in Montreal in January and February, and mostly in January last. It has/^{been}or it will be placed before you; it has just become available in mimeograph form, and I think that the experience shown may be quite closely in line with the experience in connection with the sale of cigarettes, particularly in the effect of the reduced prices on overall sales. I do not want to get too deeply into this, but on page 13, there is Table IV which indicates the sales experience of four leading chains in Montreal immediately before, during and immediately after the period of reduced prices. These prices were substantially reduced; they were reduced about 5 cents a loaf, from 15 cents to 10 cents for the standard sliced white loaf. In the

case of the four chains concerned the average number of loaves went from 120,000 before the price reduction to 225,000 during the week of the price reduction. Then we must take into consideration that I think two at least of the chains did not come in at the beginning so that their experience was quite short, and that was that their sales of private brand bread increased from 120,000 to roughly double, from 120,000 loaves to 225,000 loaves. As you would expect the standard brands decreased during the same period but not nearly to the same extent; they decreased from 39,000 to 26,000. In the two weeks following the return to normal prices for the four chains, the sale of private brands had come down from 225,000 to 132,000, which is roughly to within 11,000 of their previous sales record and the sale of nationally advertised or standard brand bread had come back to 38,000 which was just 1,000 short of the sales before the price reductions took place. Then perhaps there is more significance in the picture of the effect on general sales. For all the chains, the total sales in the two weeks previous to the reductions were \$2,830,500, and they had returned two weeks after the cessation of the reductions to within \$25,000 of that sum, which, in figures of this kind, is very, very close. The chain which was instrumental in starting the price reductions had started off with sales of \$1,640,500 and at the end of the second week was back to \$1,644,900, which is a difference of under \$5,000 from what the figure had been before the price reduction started. Those are in terms of nearly

\$2,000,000 of sales. I expect that further information will be brought before you on this particular case by one of the parties who is appearing so that I shall not go into it further now.

Now, Mr. Chairman, I think that that concludes my very quick summary of the effect of the material which is contained in this book. There are no conclusions expressed in this book. It was not the purpose, it was not the intention and it was not the power of this book to express conclusions. If I have referred inadvertently to conclusions as I have been describing the matter, it was merely in the sense of reading figures, and not any broad inferences from them. This book in a sense may be regarded as the starting point of the gathering of information. I would hope that in many of the aspects which we covered to the best of our ability at the time, trade associations, manufacturers, merchandisers and others having intimate knowledge of the subject will be coming before you and I would hope that they would be giving you not only expressions of their views which would be most useful but also as much factual information as they can which will be equally or perhaps even more valuable. This book starts the matter off.

You will be assisted in this inquiry by counsel whom the Minister has appointed for the purposes of the inquiry and I take it that the functions of counsel will be to assist not only you but all parties who are coming before you in bringing out what they want to bring out, in bringing out any aspects of the matter

which do not appear immediately from the representations that you may desire to go into later; in short to assist you and the parties in every way to bring out every possible aspect, every possible consideration bearing on the important terms of reference which you have before you.

Perhaps in closing it might be appropriate just to read those terms of reference again. This is the MacQuarrie Committee recommendation from which the terms of reference are taken:

"We therefore propose that the loss-leader practices should be referred by the Minister for a thorough study by the proposed agency and Board with a view to determining its prevalence and its effects and to recommending to the Minister suitable amendments, if necessary, of the Act."

Looking at those terms of reference obviously I respectfully suggest your first endeavour will be to determine the prevalence, and having determined the prevalence to go on and try to determine the effects; and it is upon those two points that the parties who have information at their disposal can be most helpful to you.

That is all, thank you, sir.

THE CHAIRMAN: Thank you, Mr. MacDonald, for what I think we may say is a very clear analysis of the material which your Branch has obtained over the past year and a half concerning the various aspects

of this problem. I am sure that the Commission is in complete agreement with you in your expression of the hope that those who will appear before us will amplify in many respects the information which is contained in this book, because it was not as complete in some of its aspects as you would have liked or as complete as is necessary if we are to have a complete foundation upon which to arrive at correct conclusions.

Just before calling on the first delegation or the first organization to make representations or to present a brief to us, I should perhaps indicate the method of procedure which we expect will be followed as a normal practice. Those who present briefs will in the ordinary case probably read their briefs in order that they may bring each point forcibly to our attention. Following that counsel for the inquiry will, we hope, ask questions about matters which seem to require further clarification, or matters about which it would seem desirable that the inquiry should be pursued further than is made clear by the actual brief. If any person presenting a brief or making representations has counsel in support then I think there will be no question but that such counsel will be allowed to ask further questions if they think that perhaps the matter is still not presented as it should be presented on behalf of their clients.

Since the Director's statement was merely a factual analysis of what information he has obtained I judge that there is no need for questions to be asked of him at this time with respect to what he has just

said. If that is the case, if nobody present feels it necessary to ask any questions concerning the remarks that he has made, we will proceed with the first organization which has indicated a desire to appear before us here and present a brief in Ottawa. That organization is the Canadian Manufacturers Association, and if there are no further matters with which anybody wishes to deal in connection with Mr. MacDonald's statement, I will ask the representatives of the Canadian Manufacturers Association to present their brief at this time.

CANADIAN MANUFACTURERS' ASSOCIATIONRepresented by:

H.W.Macdonnell, Esq.,

L.F.Fitzpatrick, Jr., (Sunbeam Corporation (Canada)
Limited)

W. G. Cole, (Sunbeam Corporation (Canada) Limited)

D. G. Currie, (Charles E. Frosst & Company)

Willis George, Esq., (C.M.A. Ottawa Representative)

THE CHAIRMAN: Perhaps for the record you will let us know who are the members of your delegation, so that the reporter will have their names.

MR. MACDONNELL: Mr. D. G. Currie is at the extreme right, of the Charles E. Frosst & Company, Montreal; Mr. Willis George of the Canadian Manufacturers' Association; Mr. L. F. Fitzpatrick, Jr., of the Sunbeam Corporation (Canada) Limited, and Mr. W. G. Cole of the Sunbeam Corporation (Canada) Limited.

Mr. Chairman, and members of the Board, the Canadian Manufacturers' Association welcomes the opportunity of submitting its views on the subject of loss-leader selling.

The Association has studied the statement of facts and information on the subject of "loss-leaders" in retail trade prepared by the Director of Investigation and Research. It has also consulted various groups of members who are specially interested in the question. As certain of these groups are submitting detailed evidence of the nature, extent and effects of

the "loss-leader" practice, the Association proposes not to duplicate their evidence but to confine itself to stating the conclusion which it has reached, in the light of the evidence available.

That conclusion, briefly, is (1) that "loss-leader" selling is a definite evil, (2) that it is impossible to define "loss-leader" satisfactorily for purposes of legislating for its control, and (3) that the best course to adopt is to restore the right of the manufacturer of branded goods to exercise some measure of control over the price at which his goods are to be resold.

As regards "loss-leader" selling being an evil, it is submitted that the statement of facts and information prepared by the Director of Investigation and Research bears out the view expressed by the MacQuarrie Committee that "the loss-leader device is a monopolistic practice which does not promote general welfare and is not compatible with the public interest." It may also be recalled that the MacQuarrie Committee expressed the opinion that the "loss-leader" device did not present any immediate danger as "extreme forms of price-cutting were not very likely in this period (1951) of inflation and relative scarcity". Whatever may have been the situation when the MacQuarrie Committee was writing its Report in 1951, it is submitted that there is abundant evidence at the present time of "extreme forms of price-cutting" which are "not compatible with the public interest".

As regards the impossibility of defining

"loss-leader" satisfactorily for purposes of legislating for its control, it is submitted that the evidence contained in the Director's statement of facts and information bears out the view which this Association has already expressed in reply to the Director's questionnaire, namely, that any definition of "loss-leader" which seems in any degree satisfactory, includes along with harmful practices, so many practices which are not merely harmless but beneficial that it would create more problems than it would solve.

In these circumstances, the Association has been driven to the conclusion that the fairest and most effective method of controlling the use of the "loss-leader" device is to restore the right of the manufacturer of branded goods to exercise some measure of control over the price at which they are to be resold. While the Association has no quarrel with the conclusion reached by the Lloyd Jacob Committee, that arrangements which impose restrictions on the resale of particular goods are, generally speaking, to be regarded as an unreasonable restraint of trade, this does not apply to arrangements which are "necessary for the protection of the proprietor's trade and goodwill in his branded article". Within the category of such latter arrangements, the Association agrees with the Lloyd Jacob Committee there should be included the refusal of a manufacturer to supply a retailer who uses his branded goods as "loss-leaders".

May I just add, sir, that what a manufacturer is interested in is the reputation and the future

saleability of his goods, and he feels that it is unfair that he should be put in the position of being required to continue to supply those branded goods to a distributor who is dealing with those goods in such a way as to damage their reputation and threaten their future saleability. A distributor may do those things, that is, he may damage the reputation and threaten the future saleability of goods in a number of ways. He may do it by false advertising, he may do it by poor servicing. In those two cases I take it that the manufacturer under Section 37a of the Combines Investigation Act would be within his rights in cutting off supplies to such a distributor. There are, of course, other ways in which a distributor might damage the reputation and threaten the future saleability of goods; there are other ways in addition to those two I have mentioned but the particular way that we are discussing at the moment of course is the case of a distributor damaging the reputation and threatening the future saleability by his pricing policy, in other words, by using them as loss-leaders. That is our submission, that when that happens, a manufacturer should have the right to cut off such a distributor and refuse to continue to supply those branded goods to him. Now, as I understand it, there is some division of legal opinion as to whether or not under the present law, that is to say Section 37a, as I understand it a manufacturer can cut off a distributor who is using his goods as a loss-leader, but our submission is that if that is not permitted by the law as it

stands at present, then it should be; that a way should be found of making it possible, as I say, for the manufacturer who finds that his branded goods are being damaged -- that is to say their reputation is being damaged and their future saleability threatened -- by certain distributors who are using them as loss-leaders, that manufacturer should not be required to continue to supply his branded goods to that distributor but should be within his rights in refusing to supply them.

Now, Mr. Chairman and gentlemen, there are Mr. Fitzpatrick and Mr. Currie with me, who are members of groups who are putting in full length briefs, so to speak, as I understand it, with any amount of detailed information, but they are here today supporting this general presentation of the Association and they are prepared to answer questions which the Commission may wish to put to them.

THE CHAIRMAN: Mr. Macdonnell, before any questions are asked, I would just like to ask if any other member of your delegation would care to offer any comments at this time, or any observations. Possibly they may desire to do so before questions are asked.

MR. FITZPATRICK: Mr. Chairman, the fact that we have not presented briefs here this morning is sufficient evidence that we had not intended to speak. I am a salesman; I am Sales Manager of Sunbeam Corporation (Canada) Limited. I wish, under present circumstances that I were a lawyer.

The problem has become extremely complex.

I find the position of being sales manager to be very close to untenable under today's methods of operation. We have, over a long period of years, attempted to develop goodwill in a trade name, which we feel up to the present time we have been completely successful in doing. However, our position today in the eyes of dealers in particular, and I would say in the eyes of a great number of the consuming public (through ignorance I will admit) is that Sunbeam Corporation is blamed completely for the chaotic situation which does exist. For those who have been perhaps better educated by the press, those same groups are still inclined to blame Sunbeam because in effect they have been taught to believe that we have been tried by a Combines Investigation and have been found guilty -- I say this is in ignorance and possibly influenced by the press -- and therefore have been found guilty of collusion to combine, and have been legislated against. From comments that we have had from dealers and consumers we believe there is a large part of the public which feels in just that way. We say that the trials as held up until the present time have not proven circumstances such as those in regard to which it has been seen fit to legislate against us so far as our marketing is concerned, and therefore we find ourselves in the unfortunate position of being required to provide proof of a situation which we do not think was proven to be wrong in the first place. As I say, we do not feel that we have been tried and found guilty; we do not think the evidence was sufficient to warrant

the legislation which now exists. We are in the awkward position that now we must provide the evidence, and apparently that proves that what we now have is wrong.

As I say, I am quite unprepared this morning to speak; I would like to be able to read this.

We, that is to say, the American parent company have had extensive experience in the United States. We have submitted to the Commission already, complete reports as to our operations in the United States and the success which our operations have had down there. I hope it will suffice to say that at least in principle a very important marketing principle to us has been recognized in the laws as they exist down there. Probably we would be the first to admit that there are many loopholes, many complications which involve constant legal entanglements which have been an extreme burden to our company in the United States, but the fact remains that a very important marketing principle has been recognized, and perhaps the legislation may improve with the developments that are now being tried. The marketing principle to which I am referring is the principle that price competition with certain branded, and I will say durable merchandise leads to a merchandising monopoly which we consider in the long run is a very serious situation for the manufacturer, for the distributor, for the retailer and eventually for the consumer. What I am trying to say is that as certain dealers are permitted to cut prices -- we have ample evidence of that; I could name many in Toronto

who have been extremely successful -- they drive other retailers completely and totally out of the market because those retailers cannot afford to handle the products involved. Obviously, if you are a dealer I would suggest that when you cannot make a profit when you make a sale, then you will do all you possibly can to prevent making such a sale. You will discontinue handling the product if you possibly can. Our position is such now that we must acquaint the consumer with the exclusive features of some of our appliances to a point where he will not fall prey to a dealer's powers of persuasion. As that occurs, dealer by dealer, it eventually reaches the point where they begin to knock our product. I would like to say that we have evidence of it but I am sorry to say we do not have evidence which we can submit in writing. I am referring to telephone conversations and other what you might call surreptitious methods of evidence, by phoning stores who have been hurt very considerably by these things about which I am commenting now. Eventually they reach a stage where they begin to knock the product which they do not wish to sell, with the result that when somebody comes into the store and asks about our product they say, "Well, the Mixmaster, yes, in the past it has been very good, but those Sunbeam people are not as thorough as they used to be; their inspection has fallen off and their product value has dropped. Now we would recommend for your consideration that you try brand X".

These conversations are taking place more and

more and I think you can understand how seriously we regard such a situation as that, and we consider that these practices are resulting from the present legislation. That position, we suggest, is untenable and leads to a merchandising monopoly, which I attempted to refer to at the beginning. Slowly but surely, under those conditions, with items such as ours and possibly many others also, one or two dealers come to the fore, and by extreme price competition drive all other retailers out of the market. I think from what I have heard that probably later on you will hear of examples where manufacturers have enjoyed very large markets in large areas with durable, branded merchandise, and the situation has now been created -- for the moment this will remain as a theoretical example, but I am sure that proof will be provided before your meetings are concluded -- where manufacturer X enjoys a very large business in market Y and to attack that market they use some 20 franchise dealers. In that market, by price cutting tactics, one among those twenty has risen to the fore and has taken a position where they completely control that manufacturer's operations in that area. I suggest that that is made possible entirely and completely by the present legislation. The very awkward position of the manufacturer under the law is such that where previously he could decide with whom he would deal, now he is forced to deal, without any recourse, with those who are regardless of his product and regardless of his record as regards the goodwill involved, the trademarks and so on.

I think you can see the position in which that manufacturer now finds himself completely and totally dependent in that very large market upon the efforts of one dealer, and tomorrow that dealer is under no obligation to continue handling that particular product; tomorrow the dealer can cut off the manufacturer. I suggest that that is a very serious situation, and I would say that that is perhaps the strongest point so far as the difficulties which can exist in the future in regard to a merchandising monopoly.

There are other evidences of that. In our efforts to produce quality products and so on, at previous hearings I believe it has been proven and is in the record that the margins of profit on branded merchandise are, generally speaking, considerably lower than the margins of profit involved on non-branded merchandise. That I believe is the evidence which the MacQuarrie Committee has on the record. That is certainly not, you might say, evidence of any damage that the branded merchandise manufacturer has created by the sale of his products, and as regards the accusation which has been made that we have held our prices extremely high, we contend that we cannot do that; the force of competition is such, as between branded and unbranded merchandise, that we cannot do that. It is our constant effort to drive our prices down in order to remain in the market.

As regards the merchandising monopoly of which I spoke, we control only one function for one product which goes into the merchandising system; we control

the manufacturing function involved, and we insist that we should have our right to have some say in the merchandising function, but the law, as such, has given rise to this situation; it has encouraged the actions of major retailers, national retailers to push aggressively non-branded merchandise -- well I should not say non-branded merchandise but shall we say stencilled merchandise. They control, not only the merchandising but they control the manufacturing function of merchandise; they control most of the merchandising, they control the price of it, because the position is such that under the present law they are not in a position where they have to be concerned about the distributor or the dealer; they control all those functions, and therefore they control the price right through to the end user.

I think from the comments I have made it is obvious that these national accounts are encouraged first of all to knock the nationally advertised brand of merchandise such as the Mixmaster; they are encouraged to do that because they are in the position of having a merchandising monopoly. This whole situation gives rise to the merchandising monopoly which I am trying to suggest, and I would like to say that we feel that in the monopoly condition which exists there certainly there is much more possibility of harm to the consuming public in the long run, as a result of that situation.

As I say I would have liked very much to have prepared in brief form the comments which I am trying to make here this morning. We have been burdened with

the problem of providing statistics and facts supposedly which as I have suggested, were not proved when the present law was put on the books. You will be asked in effect to deal with a situation which we feel defies statistical analysis. I have suggested that we have been hurt most by the dealer who behind the scenes in his store, removes our product from his counter, does not stock it, and therefore cannot take care of the seasonal problem to which we are subjected. It is obvious that the bulk of our sales will be made in the latter part of the year, towards Christmas, and the major gift occasions. We depend for the volume of our sales upon the fact that our dealers are enthused about our product, that they can make a profit when they sell it, and therefore that they will permit themselves to carry a large stock in advance of the major buying season. We suggest that they cannot do that when they have the fear that they run the risk of losing the investment which they have placed in that product, and therefore when the short period comes along when the sales are made, our product is not available.

Now, you are asking for statistics of operations whereby dealers are not stocking our products, but we find that impossible to obtain. We would love to provide statistics of dealers who are not stocking the product but we find those statistics impossible to obtain.

MR. WHITELEY: Would you expand that point as you take it up.

MR. FITZPATRICK: How is that, sir?

MR. WHITELEY: You say that you cannot find a dealer who fails to stock your product.

MR. FITZPATRICK: We can find him, yes, but to provide statistics of the numbers who are in that position is an impossibility from our standpoint.

MR. WHITELEY: Could not you select certain examples to show it?

MR. FITZPATRICK: Could we select certain examples? It is conceivable but there again it presents a major problem. We might perhaps turn to a research organization, though I am not sure what would be your reaction to such a proceeding. We could turn it over to a fact finding organization, but then perhaps you would have some quarrel with the area in which they had made their trials. I would suggest that in order to provide proper evidence they should conduct that poll across Canada so that you would see the whole picture in areas where there is no price cutting and compare it with areas in which there is price cutting, but may I suggest that that would be a very expensive matter.

MR. WHITELEY: I presume that you have volume figures for your own output. Are you submitting those later on?

MR. FITZPATRICK: One of my purposes in being here this morning was first of all to get to know you gentlemen, to know your intentions, your methods and your desires in order that we might help you resolve this problem. If you wish to know those facts as to our volume, I would submit -- this is off the record

for the moment -- that from a competitive standpoint we would desire very much that those figures be not known. I am now speaking of specific figures that I have in mind which are the figures to which I think you refer; the volume of Sunbeam Mixmasters which are sold for example in area X or the volume of Sunbeam Ironmasters which are sold in Market X. We would not want our competitors to know those figures and I am sure our competitors would not want us to know their figures.

MR. WHITELEY: Well, you know the position of the Commission.

MR. FITZPATRICK: I do, yes.

THE CHAIRMAN: It would seem, Mr. Fitzpatrick, that it might be possible for your company from its sales records to compile fairly accurate figures upon a limited basis. Take for example one metropolitan area where you believe that there has been heavy price cutting which has interfered with the saleability of your product, and another fairly substantial area in which you believe that practice has not been carried on. You could show the position as it was, say in 1952 or 1953 before the practice began, and as it is now. Would not your sales records provide that information fairly readily without disclosing the actual location or disclosing the names of your customers?

MR. FITZPATRICK: I do not see how, unless we can speak in terms of percentages. Beyond that I would suggest there is a further complication: we deal through wholesale distributors exclusively, so

that the facts are beyond our reach. We deal with White's Hardware, Masco Electric, Northern Electric and so on, and therefore, the statistics are considerably beyond our reach.

The major problem and the major damage that I wanted to suggest was to the goodwill involved in our trademark and I suggest that we could never get statistics of the dealers who are knocking our product by suggesting that it does not have the same merits and the quality that it used to have. Those are, I am sure you will agree, impossible statistics to obtain.

MR. WHITELEY: Would not you regard as the test of that the acceptance of your product?

MR. FITZPATRICK: Yes, the acceptance of our product. I would submit that some of our figures show increases even in the areas where damage is being done by price cutting, but I would like to say that we feel very strongly that the major reason for that is customer satisfaction. It may take a considerable time to break down that customer satisfaction. If we are continuing to ride on the comments of satisfied customers who are encouraging other people to buy Sunbeam appliances, that is difficult to gauge too. There are other evidences we have had in conversation. For instance we have had it in conversation from major national retailers that the time has come when they were discontinuing some of our appliances. They have actually told us that in some areas and more or less asked us "What are you doing about it?", suggesting that we have been extremely lax in permitting this

present situation to occur, and they go on to say that therefore what they are doing is only what we deserve. I suppose we might submit letters to that effect, and I would suggest it might be conceivable that we could obtain them, but I am a salesman. I have had those comments and I find them very difficult to meet. I do not suppose you would expect that I should go to those organizations and ask them to put those things into writing. I am hoping at the moment that regardless of what they have said to me they will go on selling our appliances, but if I asked them to put that in writing, they would not care to go against their written word. That is further evidence which I submit it is impossible to obtain, and which we have no desire to obtain.

You must forgive me because I am going to do a fair amount of wandering here in discussing this matter. We feel that we are dependent to a major extent upon the operations of dealers. We can do a certain amount by advertising in the press, on the radio and television and so on but beyond that we feel that we have a very great stake in the desire of the dealer to merchandise our product, and we state quite clearly that in the future we feel our success will lie in the ability of the dealer to demonstrate our products. When I talk about demonstrating our product, that brings to mind a case which we are considering very carefully at the moment. We are planning in Canada the introduction of a new appliance, an automatic fry-pan. We suggest that we have a serious problem there. This automatic frypan

has many desirable features, but we say that it is going to require a fair amount of dealer demonstration, in order that we may sell it in any great volume. I might suggest that you think personally of your reactions to an automatic frypan. I think that your reactions would be just these: well, yes, it may have some market, but if I were to see it in use and they could prove to me that it is of use to me, then I would be interested. With creative selling then perhaps I might be in the market for an automatic frypan.

Therefore today we are in the very awkward position that we know we need the dealer's support, and dealer's effort, which costs him money. Our usual methods of approach involve very close co-operation in many cases on a sharing-expense basis, advertising space, store demonstration and so on. We have teams that we send out, people who go into the stores and set up demonstrations, but I suggest that the reaction to our efforts, because of the very bad name which Sunbeam has at the moment in the way of merchandising support, is such that our task is going to be a most difficult one. On many occasions up to the moment in a similar type of demonstration with our deep-fryer, for example, we had for a certain length of time very close dealer co-operation. They would share the cost of sending a demonstrator to the store, they would share the newspaper advertising and so on, but we are finding it more difficult day by day to get that type of co-operation, and in the future with this new product, we fear that we may not get that co-operation

under the circumstances.

What does that mean for the public? Perhaps your suggestion might be that the public could not care less about our automatic frypan. We suggest it has merit to the consuming public and we suggest too that it is as the result of further research on product development upon our part which we have been encouraged to undertake in present marketing conditions. In short, we feel that the very nature of our products is such that through 30 years of progress here in Canada we have developed a marketing system -- I call it a system although perhaps that is not a good one to use, a distribution program -- that has led to the development of further products. That distribution program has already been set up and now suddenly the distribution program has been swept from underneath us and we find ourselves in a very difficult position .

Gentlemen, I thank you for allowing me to take up your time, and I would be pleased to answer any questions, or to try to answer any questions you may wish to ask.

THE CHAIRMAN: There is just one question which occurred to me. I want to be quite certain of exactly what you mean by your reference to the bad name of Sunbeam products. You are referring, I presume, to the dealer attitude rather than the consumer attitude, are you?

MR. FITZPATRICK: Yes, Mr. Chairman, to the dealer attitude, but the dealer is a big educational factor where we are concerned. If Mrs. Smith goes

into Mr. Dealer's store and asks about Mixmaster, and that dealer tries to educate her to the fact that Sunbeam products are not what they used to be, we suggest that is damaging to us and to our connection. In that regard we have a brief which has been submitted to Mr. MacDonald previously in regard to our dealings with Macy's in New York City, and there was one point in that brief which we felt was a very material factor. I would like to read the whole section if I may:

"As to any products manufactured by Sunbeam which Macy's owns (whether purchased lawfully before the institution of the fair trade contract system or purchased wrongfully and tortiously by inducing violation of Sunbeam's contract) Macy's acquired only legal title to the particular product but did not thereby acquire any ownership of or right to use appropriate or advertise the Sunbeam trademarks and goodwill for any purpose."

Now it is conceivable -- I do not know, I should have investigated this before I submitted this as information -- that that may not be possible here in Canada, but the point is that we have developed a goodwill in a trade name by great expenditure of money over a long period of years, and we feel we are now in the hands of a very few who could not care less about Sunbeam's future when it comes right down to it but who

see fit to bandy words about our product and say what they care to say about it while we are left completely helpless to do anything about this particular dealer's actions. We suggest very strongly that we should be allowed in those circumstances to take action to defend ourselves and to prevent things being said which are damaging to our future, and further to prevent a condition of monopoly on the part of those retailers from developing. These are very serious problems to us and we suggest are serious problems for the consumer in the long run.

THE CHAIRMAN: Does any other member of the delegation wish to offer any comments at this time?

MR. MACDONNELL: I do not think so.

THE CHAIRMAN: Does counsel desire to ask any questions in connection with this brief?

MR. WICKWIRE: Yes, Mr. Chairman.

Mr. Macdonnell, I think it is a fair statement to say that member organizations of your association will be submitting briefs with detailed information?

MR. MACDONNELL: Yes, sir.

MR. WICKWIRE: I think Mr. Fitzpatrick said that his own company was going to do so.

MR. FITZPATRICK: That, sir, is our intention. I would suggest this, that the Commission has not yet had our brief. I cannot go on record as saying that we will be doing so, but it is our intention at the moment. Perhaps I might ask, in order to defend myself and explain myself, whether it would be possible to get a copy of what I said?

THE CHAIRMAN: You had better make arrangements with the reporter about that.

MR. FITZPATRICK: Thank you, sir.

MR. WICKWIRE: Now, Mr. Macdonnell, you state in your brief -- I am referring to the first part of paragraph 4, which is the last paragraph on page 1 -- that the facts and information prepared by the Director bear out the view expressed by the MacQuarrie Committee that the loss-leader device is a monopolistic practice which does not promote general welfare and is not compatible with the public interest. In that connection does not the material submitted by the Director, of which we had a resume this morning, indicate that there is great diversity of opinion as to the nature and effect of loss-leaders?

MR. MACDONNELL: That is true, yes.

MR. WICKWIRE: And also that there is a great diversity in the situations to which the factual data relates?

MR. MACDONNELL: Yes, I quite agree.

MR. WICKWIRE: You suggest that there is no common pattern in the information that has been filed?

MR. MACDONNELL: No, we could not discover any.

MR. WICKWIRE: Can you tell the Commission upon what sections of the material you rely for your conclusion as expressed in paragraph 4?

MR. MACDONNELL: Well, not offhand, no. If it would be your wish we could prepare a document endeavouring to list those sections of the report which bear out my statement here.

MR. WICKWIRE: I think, Mr. Macdonnell that the Commission would be very happy to have that.

MR. MACDONNELL: Very well, we will prepare that.

MR. WICKWIRE: Is there any evidence in the Director's material that loss-leaders are an evil or that they are a monopolistic practice as suggested by the MacQuarrie enquiry. Is there any evidence of that?

MR. MACDONNELL: Yes, we consider that we have found evidence there supporting the view of the MacQuarrie Committee.

MR. WICKWIRE: Would you tell me what it is and where specifically?

MR. MACDONNELL: I am not prepared to do it offhand but I will prepare something if you like and submit it to you.

MR. WICKWIRE: Your brief states, at the end of the same paragraph:

"...that there is abundant evidence at the present time of 'extreme forms of price cutting' which are 'not compatible with the public interest'".

Can you indicate where the abundant evidence is to be found?

MR. MACDONNELL: Well, we had reference to the situation which has developed in Toronto and some of the major centres in the last few months. We will submit evidence of that if it is the wish of the Commission that we should do so. I have in mind particularly a meeting of the appliance people, a convention held in Toronto a few weeks ago which was attended by

the Director of Investigation and Research. I think that perhaps the situation which was disclosed at that conference is the situation which we have particularly in mind in using this language about "extreme forms of price cutting", when the General Electric Floor Polisher which usually sells at \$49.50 is advertised at \$33.75. That struck us as good grounds for saying that extreme forms of price cutting had been practiced. That is one example.

MR. WICKWIRE: But you would have no idea of the price of that same article to the dealer, I suppose?

MR. MACDONNELL: No, I have not got that information at the moment.

MR. WICKWIRE: At any rate your reference to abundant evidence of price cutting, is not to something contained in the Director's report, but otherwise?

MR. MACDONNELL: Yes, that is true.

MR. WICKWIRE: Will members of your organization be submitting that evidence to the Commission as the enquiry develops?

MR. MACDONNELL: Yes, I think there is no doubt of that.

MR. WICKWIRE: From your knowledge of the circumstances does this evidence exist generally or in particular localities?

MR. MACDONNELL: I should think it exists fairly generally.

MR. WICKWIRE: Fairly generally?

MR. MACDONNELL: I think so, yes.

MR. WICKWIRE: And will be forthcoming?

MR. MACDONNELL: Yes.

MR. WICKWIRE: Does it relate only to certain trades?

MR. MACDONNELL: Yes, it is principally relating to certain special trades.

MR. WICKWIRE: Could you enumerate the trades?

MR. MACDONNELL: Well, the appliance business is the chief one.

MR. WICKWIRE: When you suggest in the same paragraph of your brief "extreme forms of price cutting are not compatible with the public interest", would you care to enumerate the components of public interest?

MR. MACDONNELL: Well, that is a rather large order, is it not. I take it that what we had in mind was the same thing which the MacQuarrie Committee had in mind. Those words are taken from its report, and I take it that what they had in mind was the long term interest of the consumer. That is certainly what we had in mind and that is what we understood the MacQuarrie Committee had in mind in using those words.

MR. WICKWIRE: Would it also include a reference to employment?

MR. MACDONNELL: Yes.

MR. WICKWIRE: And therefore would not affect a manufacturer?

MR. MACDONNELL: But surely the effect on employment would affect the manufacturer.

MR. WICKWIRE: Yes, but you suggest the main component would be the long term public interest, the consumer?

MR. MACDONNELL: Yes, I think the interest of the consumer, and of course the effect on the manufacturer too.

MR. WICKWIRE: Referring to paragraph 5 of your brief, you state:

"...that any definition of 'loss-leader' which seems in any degree satisfactory, includes along with harmful practices, so many practices which are not merely harmless but beneficial, that it would create more problems than it would solve" -- that is to say to change the legislation. What do you consider the harmful practices of loss-leadering?

MR. MACDONNELL: The harmful practices?

MR. WICKWIRE: Yes.

MR. MACDONNELL: The damage done to the reputation of branded goods and the adverse effect on the future saleability of the goods. The manufacturer of branded goods may spend very large sums in advertising his goods across the country, and some retailer or a certain number of retailers, by using those goods as a loss-leader may give the public the impression that the price at which those goods have been advertised to be sold is quite unfair and that the goods are not what they are represented to be. That, I think, is indisputable.

MR. WICKWIRE: Well, Mr. Macdonnell, if we accept that as evidence that that is a harmful practice, would not the best evidence of that be the volume of the manufacturer? Whether he has suffered a decrease

in his volume?

MR. MACDONNELL: That would be one of the most striking evidences of it, yes -- probably the chief evidence of it.

MR. WICKWIRE: What do you say of the harmless practices?

MR. MACDONNELL: Well, we were thinking there of the position of a dealer who has made a bad guess and has stocked up with goods which he cannot sell.

MR. WICKWIRE: Perhaps goods which have deteriorated or something of that nature?

MR. MACDONNELL: Yes, quite so; that is a good example.

MR. WICKWIRE: Or seasonal goods, at the end of the season?

MR. MACDONNELL: Yes, I think that is an example.

MR. WICKWIRE: Goods subject to spoilage?

MR. MACDONNELL: Yes, that would come in.

MR. WICKWIRE: What do you suggest are the beneficial practices?

MR. MACDONNELL: Well, one which occurs to me immediately is the case of a dealer who has stocked up with goods which he cannot sell and he may have the prospect of bankruptcy unless he can get rid of those goods and get some capital. I would not be prepared to say that the man who sold those goods because he had to do so in order to survive was using those goods as a loss-leader.

MR. WICKWIRE: Is there any suggestion in your

reference to beneficial practices that some form of price cutting might be beneficial to the consumer?

MR. MACDONNELL: No. What we had in mind there was pointing out that sometimes when a dealer sells goods at a low price he is doing it, not as a loss-leader at all but he is doing it because he has to get some capital on those goods in order to carry on. As I say, any definition of loss-leader which made that kind of action impossible, obviously would be damaging to business and to the economy as a whole.

MR. WICKWIRE: Would not one of the beneficial practices which results from a form of price cutting be the right of a consumer to purchase an article at a cheaper price?

MR. MACDONNELL: Well the consumer gets an immediate advantage but our point is that you have to look at the thing over the long term. It may well be, and it will be shown that in many cases this has actually happened, that the immediate advantage to the consumer by reason of the low price is completely washed out by the long term disadvantage.

MR. WICKWIRE: Can you be a little more explicit in your reference to a long term advantage? Would you just explain what you mean by that?

MR. MACDONNELL: Well, there is always the danger, as Mr. Fitzpatrick has already pointed out, in extreme forms of price cutting that you have a monopoly created. It is happening with some dealers already.

MR. WICKWIRE: As suggested by Mr. Fitzpatrick, that in a given area one dealer will become too

powerful?

MR. MACDONNELL: Quite so.

MR. WICKWIRE: Is that what you had in mind?

MR. MACDONNELL: That is a good example, yes.

MR. WICKWIRE: Would not the converse of that be so? If you have a price maintained article in the same area by a number of small outlets, is not the manufacturer then also in the hands of the dealers?

MR. MACDONNELL: You say a number of --?

MR. WICKWIRE: A great number of outlets as distinct from the one powerful one which Mr. Fitzpatrick mentioned. Is not the manufacturer still in the hands of dealers?

MR. MACDONNELL: No, I do not think so. It is a far healthier situation that the manufacturer should have a number of outlets and should not be at the mercy of one. It seems to me that that stands to reason.

MR. WICKWIRE: My point perhaps is this: In a great many instances is not the manufacturer's attitude influenced by the dealers? Is not his attitude on this subject influenced by the dealers?

MR. MACDONNELL: I think I had better let Mr. Fitzpatrick answer that.

MR. FITZPATRICK: I shall get myself tied up in knots before I am finished. Where would you suggest that I start.

MR. MACDONNELL: Just deal with this last question.

MR. FITZPATRICK: About us being affected by the attitude of our dealers?

MR. WICKWIRE: Is your attitude influenced by dealers or distributors?

MR. FITZPATRICK: I would say yes, because we are so dependent upon their efforts, so to speak.

MR. WICKWIRE: Whether it be through a small number of large outlets or a greater number of small outlets?

MR. FITZPATRICK: We feel that in the long run and so far as our products are concerned it lies with the smaller retailers.

MR. WICKWIRE: And you are still influenced by the attitude of the large number of small outlets?

MR. FITZPATRICK: When you say "influenced by their attitude" I do not know of any expression of attitude as a group but we know enough about our marketing, our merchandising program, to know that we are dependent upon their efforts in the long run.

MR. WICKWIRE: Perhaps while you are on your feet, I might ask you this: as suggested by one of the Commissioners, can you supply to the Commission any evidence to show that in your company the volume has suffered?

MR. FITZPATRICK: We knew that you would ask that question. I attempted to explain that matter in passing. We are in the awkward position, or you may consider it such, of having enjoyed a sales increase during the past year. We contend that that sales increase has been the result of many things: a new product for one thing, and the fact that consumer satisfaction over the 30 years we have been

in business, has resulted in people who own Mixmasters today and who have bought them over that long period have been so completely satisfied, that the power of their word-of-mouth advertising has been such that we continue to sell Mixmasters despite the best efforts of many of the small retailers to prevent that happening. The result is that our sales are still on the increase, but our problem is this.

MR. WICKWIRE: You do not like that.

MR. FITZPATRICK: I would not say that, but we are concerned about our future. I think you cannot help but agree that when you are aware that your dealers are knocking your product, in the long run you are going to suffer the consequences. If they had reason to knock it because of the quality of the product we would accept that and do something about it, but we are in what we consider to be an indefensible position at the moment. We can do nothing about their best efforts to bring down our years of hard work in creating goodwill.

MR. WICKWIRE: But in your own particular case, apparently, the goodwill in the brand and trade name that you have built up, plus the satisfaction that people have had from your machines have far outweighed the adverse effects that you say price cutting has had.

MR. FITZPATRICK: That evidently could be concluded at the moment.

MR. WICKWIRE: But you have a fear that in the long run that will not be maintained, is that right?

MR. FITZPATRICK: We have a very definite fear

of that, yes, and I would submit again that when you know that the people upon whom you are dependent in that last three feet across the counter are militating against you as a group because they cannot afford to sell your product, then I am sure you must consider that that is serious evidence that our future is in doubt.

MR. WICKWIRE: When you say they cannot afford to sell your product, you mean that they cannot afford to sell it in competition with other outlets?

MR. FITZPATRICK: They cannot afford to sell it in competition with other outlets? In the cases I have in mind I would say yes.

MR. WICKWIRE: Do you know of any instance where the sale of your product has been at less than the cost to the dealer?

MR. FITZPATRICK: I do not know what bearing this has upon your approach so far. I find that very difficult to prove. Once again, we are once removed from our dealers, and I suggest this as a further thought for serious consideration that the price cutting -- and this perhaps is in the direction of what you people intend -- has extended beyond the dealer level to the second level, the distributor level, and lacking policing power in regard to the use of our goodwill, or not wishing to use policing power -- in many cases as a matter of fact, you have told us we should not -- we do not know how deep our distributors are cutting at the moment. Therefore, I find it difficult to answer the question. - So far

as suggested prices are concerned, both dealer cost and consumer cost, we do know that many dealers are selling below those prices, but there is an element there which we cannot break.

MR. WHITELEY: When you mention suggested prices, to what do you refer?

MR. FITZPATRICK: We have the privilege to suggest both dealer prices and also the privilege of suggesting retailer prices. The suggested cost is the dealer buying price -- the suggested dealer cost.

MR. WHITELEY: You think that some distributors are under-cutting that?

MR. FITZPATRICK: We know that.

MR. WHITELEY: What incentive would they have?

MR. FITZPATRICK: They have the incentive. This merchandising monopoly of which I speak has resulted in a very few dealers now controlling such a large part of the market in volume that they are now in a position to dangle that great big order in front of a few distributors, for tender you might say, and the result is that the law of cut-throat competition takes over and the distributor is prepared to do anything, you might say, for perhaps the extreme minimum margin to service the one or two accounts which are now in a position to control the market. I find that some of this language is rather dangerous because it could be misinterpreted in the press.

MR. WICKWIRE: But, Mr. Fitzpatrick, in the case you mention your volume is up, the distributor's volume is up and the dealer's volume is up, and the purchaser

buys the article at a more moderate price.

MR. FITZPATRICK: I doubt very much if you could prove the comments you have made there in fact. I submit this is a possibility -- I will not support it as evidence, but offer it as a comment at the moment -- our sales volume is up last year it is true, but we suggest very strongly that the net result of our sales increase is due to the fact that the dealers and the distributors, not fully recognizing the effects of price cutting, we suggest, overstocked at the Christmas season last year with the result that they carried a heavy inventory into the New Year. This is our estimation at the moment. We submit that our distributors and dealers carried very heavy inventories into the New Year, which is reflected in our high sales volume last year, but does not represent final sales to the consumer, so perhaps those increased sales figures that I spoke of over the last year are questionable from the standpoint of the consumers.

MR. WICKWIRE: There certainly has not been any appreciable drop in sales with your organization.

MR. FITZPATRICK: Over what period?

MR. WICKWIRE: Well, let us say the period since November of 1952.

MR. FITZPATRICK: There has not been any appreciable drop? No, I would say not, and I have attempted to show why not. One of the points I think you are trying to get at is the suggestion that perhaps the consumer should have the privilege of dispensing with some dealer's services. Is that a question at

all?

MR. WICKWIRE: Well, you have raised the point, and you have emphasized and re-emphasized it, that the reason why your company wishes to have a measure of control, though I do not know what the measure is yet--

MR. FITZPATRICK: I have tried to suggest that.

MR. WICKWIRE: We will try to find out -- is to try to protect your brand name.

MR. FITZPATRICK: That is right.

MR. WICKWIRE: And to protect all these years of effort, advertising, experience and research which has been built up in your product.

MR. FITZPATRICK: That is right.

MR. WICKWIRE: Now it seems to me that practically speaking -- correct me if I am wrong -- one of the best pieces of evidence to bear out your contention is that your sales had dropped.

MR. FITZPATRICK: I take it that you are not satisfied with my comments to date.

MR. WICKWIRE: Oh yes, I am, but I am trying to suggest to you whether there are not other ways of protecting your brand or trade name, and the goodwill of your articles.

MR. FITZPATRICK: We suggest in reply actually that we see no reason why there should be other means that we should have to resort to. The point I was wishing to make a moment ago was in regard to the suggestion you made that Mr. and Mrs. Consumer might be dissatisfied with a certain dealer's service and could go to another dealer when they so desired. We

feel that the very nature of our product is such that when it was conceived we knew how it had to be merchandised in order to obtain volume of sales. We knew we could not depend upon the back door or back alley operator for many showings across Canada, for aggressive dealer activity in the way of creative selling, because such a man has no power, no ability profit-wise; he has not the means, you might say, to perform any sales promotion. Therefore we knew that in order to obtain volume, which means low price, in our products, we required a network of efficient dealers who had good-looking stores, inviting stores and good displays, and all those good features that we knew would attract customers into their stores and expose themselves, shall we say, to the possibility of their desires being aroused. If we had those things we reasoned that we would sell many Mixmasters and as a result we would be able to produce in large volume which means greater economy and means very much, we think, to the consumer. Now to get back to the question: can those services be dispensed with? Apparently it has been decided now, or the facts actually show that it is considered that those services can be dispensed with, which simply means this, that the dealer who has done all that through all these years, who has done all the hard work, coupled with our own efforts to put Mixmaster on the pedestal where it is today, finds himself in the position where we are now permitting a group of retailers who have done nothing to create that goodwill and so on, to come in and reap the harvest. That is

a very indirect answer I would suggest, to the question as to whether those services can now be dispensed with, now the tree has grown and the apples are ready to be picked.

MR. WICKWIRE: Is not the purchaser also reaping some of the harvest?

MR. FITZPATRICK: In what way?

MR. WICKWIRE: Because through quantity producing, perhaps better methods of distribution, larger quantities, better management, he is able to purchase your articles cheaper than he could formerly?

MR. FITZPATRICK: I can only ask this question in reply: How in the future can we obtain this creative selling of which I spoke, with the so-called improved distribution to which you refer? Who is going to do our creative selling? Who is going to take our new frypan and put it in his store and hire a demonstrator, for which they pay part of the cost? Who is going to perform that function?

MR. WICKWIRE: I assume that that would be a matter of arrangement and suggestion between the distributors and dealers.

MR. FITZPATRICK: Yes, but none of them shows any interest any more in spending money to sell something on which they will not make any money when they make a sale. I would say that your suggestion is impossible.

MR. WICKWIRE: How did you get the market originally and build up this great goodwill for Mixmaster?

MR. FITZPATRICK: We would say by hard work, by very close co-operation on the part of our dealers, by aggressive selling methods on their part; by all those features which have encouraged the consumer to purchase our products.

MR. WICKWIRE: Why are they not available now?

MR. FITZPATRICK: Because those dealers cannot make money when they sell our appliances. The margin is not there.

MR. WICKWIRE: Well, why cannot they sell more of your appliances?

MR. FITZPATRICK: We have evidence of that. We have some four or five who are selling more and more and more in the City of Toronto, but they are not interested in creative selling. They could not care less whether you know that what you are buying is good for you or not. They have no interest in the matter.

THE CHAIRMAN: It is nearly one o'clock and I am just wondering how long you anticipate that it will take you to complete your questions, and what the program will be following that. If we are going to be some time I think we might adjourn now and come back for an afternoon session.

MR. WICKWIRE: I have a few more questions, Mr. Chairman.

THE CHAIRMAN: Mr. Davidson, is there anything to follow this?

MR. DAVIDSON: No, not today, sir.

THE CHAIRMAN: Then perhaps you could give us an idea of how long you will be?

MR. WICKWIRE: I might be twenty minutes or half an hour.

THE CHAIRMAN: Then I think perhaps we had better adjourn because periods of twenty minutes to half an hour have a way of lengthening out as a result of the answers which are forthcoming.

MR. FITZPATRICK: If I might ask a question, would the questions involved concern C.M.A. as a group or Sunbeam as an individual member?

MR. WICKWIRE: C.M.A. as a group. I only intended to deal with the brief which was presented this morning by C.M.A.

MR. FITZPATRICK: May I be permitted to make a further comment off the record.

(A short discussion then ensued which the Chairman directed should not be reported)

THE CHAIRMAN: I think perhaps we need not pursue this further. The purpose of the inquiry is to ascertain what are the facts. It may very well be from time to time that a particular person who is representing an organization has not all the detailed information at his fingertips which we might like to have. All that we expect in that case is that he will tell us so, and then if possible, someone else will be made available who is able to give the information, because we do want to get it. If we have not the facts we cannot get the results that we hope for. I am quite certain that Mr. Wickwire was not intending to ask questions of Mr. Macdonnell which he was unable to answer, and expect him to answer them. He may have

asked questions not knowing whether Mr. Macdonnell could answer them or not, but that is as far as it went, and I would like to assure you that we have no intention of trying to force answers out of people on matters upon which they have not sufficient knowledge.

I think perhaps we had better adjourn now as it is almost one o'clock, and this may go on for some time yet. We had better adjourn now until 2.30.

--- Whereupon the proceedings adjourned at 12.55 P.M. until 2.30.

--- Upon resuming at 2.30 P.M.

THE CHAIRMAN: Yes, Mr. Wickwire?

MR. WICKWIRE: Mr. Fitzpatrick, you were mentioning before the luncheon adjournment that in one particular area there was one outlet which there was a danger would completely control the manufacturers in that area. Is there just the one area of which you complain?

MR. FITZPATRICK: I must admit I suggested at the time that this was not an example which applied to our particular company. This is an example about which I have heard evidence submitted by another company, and I think you will probably have the example exposed in detail at later hearings.

MR. WICKWIRE: Would you care to name the area?

MR. FITZPATRICK: I think perhaps I would be at liberty to do that. The area was Southern Alberta.

MR. WICKWIRE: Does it apply to your product?

MR. FITZPATRICK: No, it does not apply to us at all. It was a theoretical case which I suggested for whatever purpose it might serve here at the moment. Perhaps I should not have mentioned it because I am not prepared to back it up.

MR. WICKWIRE: Are there any such areas in Canada which do apply to your product?

MR. FITZPATRICK: Where we could prove a complete monopoly contract on the part of one dealer?

MR. WICKWIRE: Yes, or a tendency towards that.

MR. FITZPATRICK: We could probably provide some information that would suggest a sales volume and a

very marked increase on the part of one dealer in particular, in Toronto, and that, of course, could be attributed only to price cutting.

MR. WICKWIRE: Of your product?

MR. FITZPATRICK: Of our product, yes. I am speaking of Mixmaster at the moment.

MR. WICKWIRE: In that area it is a question of price cutting as distinct from loss-leadering, is that so?

MR. FITZPATRICK: We would choose to look upon it as being a stage beyond loss-leadering, to be perfectly honest. This question of loss-leadering and the complete lack of definition leaves us a little out in the cold as to where we should start and where we should stop in discussing it.

MR. WICKWIRE: Is it as much a question of definition of loss-leadering with you as a question of who is going to maintain more or less control over prices?

MR. FITZPATRICK: I would say I explained the principle at the beginning, that the nature of our product is such that price cutting when that is involved, eventually leads to merchandising monopoly, and therefore we would prefer to be in a position where we can name a price and have it adhered to.

MR. WICKWIRE: In that case, the case you have just cited, control over the price of the article remains with you, the manufacturer?

MR. FITZPATRICK: You say it does?

MR. WICKWIRE: In that case.

MR. FITZPATRICK: I am sorry. In the case I have just mentioned?

MR. WICKWIRE: You would prefer to name the price of the article?

MR. FITZPATRICK: We would prefer to name it, yes.

MR. WICKWIRE: Then I say the control of price remains with you, the manufacturer.

MR. FITZPATRICK: You say control of the price?

MR. WICKWIRE: Yes.

MR. FITZPATRICK: Yes.

MR. WICKWIRE: Again using the same instance, does that not tend to create a monopoly in the price of your particular commodity?

MR. FITZPATRICK: A monopoly in price? We are concerned about dealer competition, and I get back to the same statement again: We want to uphold dealer competition and create an atmosphere in which dealer competition can survive, and hence we desire the privilege of controlling price in order to create that atmosphere.

MR. WICKWIRE: Then that situation is just the converse of the one you mentioned this morning of a large outlet selling a great many of X manufactured products, in which instance you suggested that he gains a monopolistic control over prices and that the manufacturer is in his hands. I think you made such a statement?

MR. FITZPATRICK: Yes, I suggested that, but I do not see the converse.

MR. WICKWIRE: You do not say that the converse is true?

MR. FITZPATRICK: I do not see the converse.

MR. WICKWIRE: Well, if you set the price of your articles and you can choose which dealers can sell your articles --

MR. FITZPATRICK: Yes; in short, those who want to make the profit but do not want to have to handle it.

MR. WICKWIRE: -- the price fixing factor is in your hands.

MR. FITZPATRICK: I do not like this expression "price fixing".

MR. WICKWIRE: Well, determination of the price.

MR. FITZPATRICK: Determination of the price, yes.

MR. WICKWIRE: That is a sweeter rose perhaps than price fixing.

MR. FITZPATRICK: I did not follow your criticism a moment ago that the example in Western Canada was the converse of the case that I cited.

MR. WICKWIRE: Well, you suggested this morning that there was a danger of one outlet in an area completely controlling the manufacturer in that area.

MR. FITZPATRICK: Completely controlling the merchandising of his product in that area.

MR. WICKWIRE: Yes, and you have identified the area this afternoon as Southern Alberta.

MR. FITZPATRICK: That is right.

MR. WICKWIRE: Now, if that is the case, if it

should happen that one dealer can completely control the manufacturer or the sales of the merchandise of that manufacturer in that area, you suggest that he has a monopoly?

MR. FITZPATRICK: A merchandising monopoly, yes.

MR. WICKWIRE: In other words, he has the power to control the prices?

MR. FITZPATRICK: He has the power to control prices.

MR. WICKWIRE: Under the system which you advocate, you say that the manufacturer should have that power; so all I am suggesting to you on the question of loss-leadering is, that it is perhaps not so much a question of definition of what is and what is not a loss leader but who will have the power to set the price.

MR. FITZPATRICK: I will go along with that, yes. Our problem at the moment is this: It is our product, it is our effort that has put it on the pedestal where it is. We feel that the setting of the price would be better entrusted to our hands rather than to leave us in the position now where we are prey to the most unscrupulous dealer in Canada.

MR. WICKWIRE: Let me put this question to you: Is there a possibility that the price of your article or commodity to the dealer is such that it permits loss-leadering?

MR. FITZPATRICK: Is the price such that it permits loss-leadering?

MR. WICKWIRE: In other words, that perhaps you

have an unrealistic spread between the price from the manufacturer to the retailer?

MR. FITZPATRICK: There is a suggestion there that our prices might be out of line, might be too high in total.

MR. WICKWIRE: Which in turn opens the door for price cutting.

MR. FITZPATRICK: I see your point. I would like to answer that in this way, that if we choose to price ourselves out of the market then perhaps that too should be our privilege. The force of competition would ring the death knell there. But to answer your question more directly perhaps, I offered the comment this morning that the MacQuarrie Commission disclosed that the margins of profit involved in branded merchandise -- and I am not speaking of our lines specifically in this case -- are considerably lower than they are on non-branded lines.

MR. WHITELEY: Did not the Committee go on to point out that this was only to be expected?

MR. FITZPATRICK: I do not know that. Was there any reason for that?

MR. WHITELEY: I believe both the MacQuarrie Committee and also the Lloyd Jacob Committee in Great Britain said that in their view the margin on branded goods as compared with non-branded was not the test of the relationship of the margin on the branded goods because they were the goods that people were buying in volume.

MR. FITZPATRICK: The branded merchandise was

the goods they were buying in volume?

MR. WHITELEY: Yes, and therefore it was not a reasonable basis of comparison to compare the margin on branded goods with the margin on non-branded goods.

MR. FITZPATRICK: Is the suggestion there that it is obvious that the margin should be lower?

MR. WHITELEY: On branded goods?

MR. FITZPARTICK: On branded goods.

MR. WHITELEY: They were merely pointing out that you cannot compare the two. You were dealing with goods on the one hand which were moving in volume as against goods which had only a limited sale.

MR. FITZPATRICK: The comment there which I might make is that the situation of the manufacturer is such -- I believe there is a suggestion there that lower prices could or should prevail.

MR. WHITELEY: No, I think the point they were making was that that basis of comparison was not a valid one. There may be other bases of comparison which are valid but that particular one is not a valid basis in their opinion.

MR. FITZPATRICK: I am sorry. I have missed the point; I cannot discuss it.

MR. WHITELEY: I merely throw that out now in case you have time in the interval between now and your next appearance to examine their views on this particular point, because you were citing them as a reference for your argument, while I think that if you look at it closely you will find it is not.

MR. FITZPATRICK: I only said it because I

believe it was suggested that our prices could be out of line in the direction of being high, which would permit the dealer still to make a profit on the deal and to conduct the loss-leadering program. My reply was that our margins were narrower than they are on non-branded items, which I suggest helps one to draw the conclusion that the margin being less to play with the dealer is not in a position, you might say, to loss-leader.

THE CHAIRMAN: But is there not a weakness in that example as a basis for an argument? On your branded goods you usually have a good deal of advertising and build up for those goods, do you not?

MR. FITZPATRICK: That is right.

THE CHAIRMAN: As compared with non-branded goods. In other words, by that means, and other means, part of the job which the retailer has to do for non-branded goods is done for him by the manufacturer through the publicity, general build up and so on that the manufacturer carries on.

MR. FITZPATRICK: Yes.

THE CHAIRMAN: If that is so, the problem of selling, and the effort of selling by the retailer of branded goods, is less, and you might expect that he would need a smaller margin and still be able to do business under those circumstances.

MR. FITZPATRICK: Those facts are quite true. Frankly this gets out into the realm of where did the whole program start? I believe the Bureau here provides some statistics in a general sort of way as to

dealers' operating expenses, and an analysis of those should begin to suggest a dealer's average cost of doing business and what his margin should be. To an extent there is the practical side of the problem too, which involves the dealer's ability and the distributor's ability to sell in a practical way and not become involved with an untold number of different merchandising plans.

THE CHAIRMAN: I think the point that Mr. Whiteley was trying to make as being indicated in the position taken by the two Committees was that with your branded goods, there is a larger volume of sales resulting not entirely from the work of the retailer but to quite an extent sometimes from the work of the manufacturer himself, and that consequently a smaller margin might very well be expected; and to compare the two merely on the basis that the margin on the branded goods is less than the margin on non-branded goods does not really answer the question. I think that is the point that Mr. Whiteley was trying to make, and it would seem certainly in many instances, that that would be true. You do not get a complete answer by stating it in that fashion.

MR. FITZPATRICK: I think I do see your point, but let us say that regardless of who is performing the function, whether it is the manufacturer, the distributor or the retailer, all the functions of creating the mass market must still be performed, and therefore at some place in the price of the final product all the costs are reflected. In short, if our

price is out of line in a retail way then the public will be the better judge of it. All these things that we do actually can bring a larger market, yes, but they will represent sizeable cost factors in the final price of our product.

THE CHAIRMAN: That is true, but they do not appear in the margin the retailer gets.

MR. FITZPATRICK: Not necessarily, no, but I went beyond that to discuss it or I tried to discuss it in terms of the retailer, by suggesting that if our dealer's cost was high, so also would be the consumer's cost out of line.

MR. WICKWIRE: My only purpose in suggesting that to you was that there might be an unrealistic spread between the manufacturer's price to the dealer in branded goods, which in turn has opened the door for price cutting.

MR. FITZPATRICK: That is not the reason actually why price cutting exists. I think if we discuss the problem in a proper light, the dealer who is using the product in this way in most cases is not concerned about making a profit when he sells it.

MR. WICKWIRE: Perhaps we can put it in this way: there are a lot of reasons for price cutting, are there not?

MR. FITZPATRICK: On our lines, I would say no.

MR. WICKWIRE: But generally speaking there are?

MR. FITZPATRICK: I would rather not speak generally. I will speak only of Sunbeam.

MR. WICKWIRE: Then you say that so far as your

own product, Sunbeam Mixmaster, is concerned, the manufacturer's price to the distributor or the dealer is not an unrealistic one?

MR. FITZPATRICK: I would say so, yes.

MR. WICKWIRE: Now, you concur, I take it, with the submissions contained in the Canadian Manufacturer's Association brief?

MR. FITZPATRICK: I would say it was a most difficult brief to prepare because it was necessary there to attempt to put on paper the views of all manufacturers, and I must say, knowing our own problems and perhaps the peculiar nature of them, that it would be most difficult probably for many involved to support the views that might be contained therein. I would say possibly the majority might, but I think that part of the total number would have a difference of opinion on some points.

MR. WICKWIRE: Then is the brief the product of the executive or of the Association as a whole?

MR. FITZPATRICK: I am not prepared to answer that.

MR. MACDONNELL: Yes.

MR. WICKWIRE: Perhaps I should ask Mr. Macdonnell. What do you suggest, Mr. Fitzpatrick is the measure of control which you would advocate?

MR. FITZPATRICK: What do we want?

MR. WICKWIRE: Yes, what measure of control? How far do you suggest that this Commission should go in suggesting a change in the existing order?

MR. FITZPATRICK: We recommend in fact a return

to the original position. I am speaking now of our own company, knowing our own problems where we are once removed from the dealer, so to speak, so that I cannot suggest a direct connection with the dealers involved. I would suggest that we should have the right to merchandise our product in a fashion whereby, if a dealer is desirous of conducting what we consider to be an unethical practice which damages our trade name, and therein would lie the method of determining whether he was conducting an unethical practice or not, we should be able to control that.

MR. WICKWIRE: You have a fear of that, but it has not actually happened yet, has it?

MR. FITZPATRICK: We have had many consumers call up the plant and suggest that they have very serious doubts as to the quality of the product which is being sold by the cut price operators.

MR. WICKWIRE: But you also told us that you have sold more than you did before; that because the customers you had were so satisfied with your product, they have told other customers to go out and buy them and they have done so.

MR. FITZPATRICK: That is quite true, but if you were told that there was something wrong with the product you would hesitate to buy it today.

MR. WICKWIRE: But that has not happened to you yet.

MR. FITZPATRICK: I say those instances have happened, yes. Who is to say that if we had continued without the complications of the present law our sales

volume would not have been double what actually it was last year?

THE CHAIRMAN: Can you say, Mr. Fitzpatrick, that your sales volume might not have been less, either? Can you draw either conclusion?

MR. FITZPATRICK: I wish that factual evidence existed. I do not think it can be contested that when a dealer who is supposed to be promoting the sale of a product, knocks that product, eventually the company concerned must undergo severe damage. I do not see how that can be contested.

THE CHAIRMAN: If there are enough of them doing it, yes. I would say that if there were only one or two it might not be very serious to a company which has a great many dealers.

MR. FITZPATRICK: In Toronto I would say that the bulk of at least one thousand dealers who before exposed and tried to sell Mixmasters are no longer interested in the Mixmaster market. It has boiled down to the operations of roughly five dealers in Toronto. Let us take the dealer's position, the small dealer who now cannot cut as deep as the big price cutting dealer. I am the small dealer and my best customer comes along to me and says he wants to buy a Mixmaster, so I quote the full list price. The customer may or may not reply; the customer may simply leave. I may never know what that customer thinks, and that would begin to eat at me. But what happens in effect, and the dealer is finding this very fast, is that the customer simply leaves, goes down the street, contacts the price cutter

and buys the same appliance at a cut price, because it is identically the same appliance, and his impression of the dealer who quoted him the full price is that he is a robber, and he says to himself, "I will never deal with him again".

THE CHAIRMAN: I can understand that it might cause a great deal of trouble to your dealers.

MR. FITZPATRICK: Yes.

THE CHAIRMAN: But insofar as this particular question is concerned, that is, the effect of the legislation as you have said upon your sales volume I am not so sure that you can give a categorical answer. For instance, you have suggested there is nothing to show that your sales volume might not have been double what it is now and then you proceeded to say that in Toronto your sales have largely boiled down to a matter of five or six retailers who, I gather from your remarks, are price cutting?

MR. FITZPATRICK: That is right.

THE CHAIRMAN: I do not know what the facts are but is it not possible that those five or six dealers might be selling more of your products than all your dealers did before? I do not know.

MR. FITZPATRICK: Even if that were admissible you might say the point could be reached when the consumer would not be convinced by creative selling. I maintain that a price cutter is not creating any desire; the individual who is buying has been pre-sold. We depend in the long run on creative selling, that is creating desire to buy, and the price cutter will never

do that for us.

THE CHAIRMAN: Is not there one thing which he may do? I would like to get your views on this. Prices which are regarded as standard sometimes are looked upon by people who have to watch their pennies as being rather higher than they can afford to pay. If they see what appears to them to be a substantial bargain they may decide that they can afford to buy it. Is it not possible that a great many people might reach a decision to buy based perhaps on what you regard as pre-selling because of the price cutting which certain people offer to them and which gives them an actual saving of their pocketbooks?

MR. FITZPATRICK: Yes, that is quite true.

THE CHAIRMAN: I was wondering whether you have any information at all as to whether that has happened, whether many people have bought Mixmasters who most likely would not have bought them before, or not? I think it is pretty difficult to get any evidence of that.

MR. FITZPATRICK: Let me see if I can give you a figure on that. I have not the complete figure, but take the case of Macy's in New York City when Macy's, not completely monopolized the market for Mixmasters in New York City, but actually monopolized 56 percent of the market during a ten week period, and during normal times, the previous ten weeks period, they normally obtained roughly 3 percent of that same market. They had competitors in the price war, perhaps some three other major outlets, major retailers. Between the four or

five of them I believe they controlled roughly 74 per-cent of the market in New York City. Now the figure eludes me at the moment, but our company in Chicago was able to prove that the overall sales volume in comparison with other years in the New York City area was down over what it should have been considering other areas. That, in the way of factual evidence, is removed from the scene but the circumstances are somewhat comparable.

THE CHAIRMAN: Except for this fact that your total sales volume in your company seems to be up. Is it up with regard to the Toronto area? Would you know that?

MR. FITZPATRICK: That example is an American example, and they have fair trade. You say is our sales volume up?

THE CHAIRMAN: I am asking you this: your sales volume as a whole seems to be up. Can you say whether or not it is up with respect to the Toronto area where this price cutting is going on?

MR. FITZPATRICK: We find that most difficult to gauge, if not impossible, considering our methods of operation.

THE CHAIRMAN: That is the distributors who handle the Toronto are also distributing to other dealers in other parts?

MR. FITZPATRICK: For instance, White's Hardware distribute our appliances throughout the Province of Ontario, and there are others who probably go even beyond that area. Apparently the only factual evidence

that would provide any conclusion to my comments would be the fact that our sales volume had decreased, or perhaps it would be effective if figures were available to suggest that the number of dealers involved was falling by the wayside like flies. I hope that will never be necessary, to supply such figures. I hope this never goes that far, that we will have such figures to provide.

MR. WICKWIRE: Is there any evidence that any of them have fallen by the wayside?

MR. FITZPATRICK: That any dealers have fallen by the wayside?

MR. WICKWIRE: Yes.

MR. FITZPATRICK: I would think that the Bureau here would be better qualified to answer that question than I am.

MR. WICKWIRE: None of your dealers have.

MR. FITZPATRICK: You see, we do not deal directly with the dealers. Our wholesale distributors are in a position to supply any dealer on their list.

MR. WICKWIRE: But you must know who your dealers are, generally speaking.

MR. FITZPATRICK: We have been linked with some 20,000 dealers in Canada. If you say we know who they are by numbers, we have a rough idea; by name we have some idea too, but to make a survey to know what percentage of those dealers are falling by the wayside and then to prove exactly why they fell, I suggest is a very difficult problem. However, we do suggest very strongly that this is a contributing factor.

MR. WICKWIRE: It might very well have been that some of them should never have been dealers, I suppose.

MR. FITZPATRICK: That is possible too, but the fact remains that the law has permitted cutthroat competition in a price way, which most countries consider abhorrent and normally legislate against.

MR. WICKWIRE: What countries?

MR. FITZPATRICK: I would suggest that the fair trade laws in the States prevent cutthroat competition.

MR. WICKWIRE: If I may use the illustration which you used about Macy's selling your product, was that before the fair trade law was effective in New York?

MR. FITZPATRICK: There is quite a history behind that.

MR. WICKWIRE: Was it before the fair trade law?

MR. FITZPATRICK: No, there was a form of fair trade law, and for a while the non-signer clause was in question.

MR. WICKWIRE: Macy's were non-signers, were they?

MR. FITZPATRICK: Yes, and during that period these things happened.

MR. WICKWIRE: And in your view that has been cured in New York State?

MR. FITZPATRICK: I cannot go on record as saying that, no. I know that our American company feels that a great deal has been accomplished but to say that fair trade is the solution is something which I would not go on record as saying, no.

MR. WICKWIRE: Would you go on record as saying that restoration of retail price maintenance was the

solution?

MR. FITZPATRICK: In our estimation, for our particular type of product, yes. We consider that we had a freedom there which the very nature of our products requires.

MR. WICKWIRE: Have you experienced any difficulties or troubles in any of the fair trade states in the United States with discount houses?

MR. FITZPATRICK: I am not qualified to speak on the American picture except that I can provide this document for you, which is already actually part of the Commission files, which gives all the evidence that I know of with regard to the Macy case. I have no personal experience there.

MR. WICKWIRE: So you do not know whether the discount houses in the United States have been selling your products?

MR. FITZPATRICK: Recently?

MR. WICKWIRE: Yes.

MR. FITZPATRICK: I understand that steps are being taken further to control their activities, but I think we all know that there are some loopholes which have led to extensive litigation in the States in an effort to uphold fair trade today.

MR. WICKWIRE: Do you know whether or not there has been a very rapid increase in the number of discount houses both large and small, in the States?

MR. FITZPATRICK: As I suggested a while ago, I am not qualified to speak on fair trade, and here I am speaking on it. If the facts regarding fair trade are

desirable, I would strongly recommend that the facts be obtained from a body which is capable of supplying the facts. I am sorry but that is about the only way I can answer that before I get out too far here.

MR. WICKWIRE: Thank you, Mr. Fitzpatrick; I have no more questions for you unless the Commission has.

Mr. Macdonnell, I have just one or two questions to ask you. Your brief suggests some measure of control, and I ask you, as I asked Mr. Fitzpatrick, what measure of control do you advocate?

MR. MACDONNELL: I can only repeat what I said this morning that we think a manufacturer of branded goods ought to have the right to refuse to supply a distributor who he finds is using his branded goods as a loss-leader.

MR. WICKWIRE: That is very far short of restoration of retail price maintenance.

MR. MACDONNELL: Quite so.

THE CHAIRMAN: Can you say how that would work out in a case like that of Mr. Fitzpatrick where the manufacturer does not deal with the dealer who is apparently the price cutter? How would he be able to refuse to sell to him when he does not sell to a dealer at all but merely to a distributor?

MR. MACDONNELL: I think the position our people would take is that the manufacturer ought to have the right to refuse to supply, or to continue to supply, his goods, when those branded goods are being used directly or indirectly as a loss-leader.

THE CHAIRMAN: You mean if he found that goods

in certain retail stores of his manufacture were being price cut, and if he had reason to believe that retail store was obtaining them through a certain distributor--

MR. MACDONNELL: He could cut off that distributor.

THE CHAIRMAN: Cut off the supply to the distributor?

MR. MACDONNELL: Yes. We have to go that length I think.

THE CHAIRMAN: Would not you need protection against rather arbitrary conduct there?

MR. MACDONNELL: Well, we have considered that and we feel that the danger is not very great, because what a manufacturer wants to do is to sell his goods, and we feel that no manufacturer is going to avail himself of this right to cut off a distributor unless he feels that he has extremely good reason. We feel that there is that safeguard, that, as I say, a manufacturer's main reason for being in business is to dispose of his goods.

MR. WICKWIRE: You do not know at this stage that evidence exists that he is not selling his goods under the existing legislation.

MR. MACDONNELL: Well, under the existing legislation, our members feel that the situation is so chaotic that it has a bad effect on the business economy as a whole.

MR. WICKWIRE: My point is this: is it that it is so chaotic or is it that your Association has fears that it might be chaotic?

MR. MACDONNELL: Well, we feel that it is chaotic

now in certain areas, and we feel that under certain circumstances that condition of chaos might spread very widely.

MR. WICKWIRE: And when you suggest some measure of control, namely the right of the manufacturer to refuse to supply a dealer with branded goods -- I think you used the expression "sold as a loss-leader".

MR. MACDONNELL: Yes, that is right.

MR. WICKWIRE: How far does the Association go in definining loss-leadering in the context?

MR. MACDONNELL: Well, as no doubt you have in mind, we think it passes the wit of man to define loss-leadering satisfactorily, for the purposes of putting a definition into a statute and using it as a means of curbing loss-leadering. We think that is practically impossible, but we think, as I said a minute ago, that it is safe to leave a manufacturer to decide for himself when his branded goods are being used as loss-leaders. That is the only suggestion we have to make. We do not think there is any real danger in that for the reason that, as I say, a manufacturer's main interest in being in business is to distribute and sell his goods.

MR. WICKWIRE: At the conclusion of your brief you suggest that a manufacturer should have the right to refuse to supply a retailer who uses his branded goods as a loss-leader?

MR. MACDONNELL: That is right.

MR. WICKWIRE: Earlier in your brief, namely in paragraph 5, you express the view that any attempt

to control the harmful effects of loss-leader selling by legislation would interfere with harmless and beneficial practices. Now, my question is: is there a danger that private control by a manufacturer of branded goods might also interfere with harmless and beneficial practices to the prejudice of the public?

MR. MACDONNELL: We do not think so. For instances, when we spoke in paragraph 5 of the difficulty of defining loss-leader satisfactorily for the purposes of legislation for this control, we had in mind, as I said this morning, the case of a dealer who has made a bad guess and has got overstocked with a certain kind of branded goods, and what he must do if he is to survive is to sell those goods. Now, we think that in a case of that kind, no manufacturer in his senses would cut that man off. I mean, he would recognize that that chap had made the sale of those branded goods at a cut price.

MR. WICKWIRE: He would either have to sell them or go under.

MR. MACDONNELL: Quite so, he would be forced to. We think that a manufacturer could be safely left to discriminate between that sort of case and the case of a genuine loss-leader where his goods are being, as someone said, kicked around and used to get people into the store so that they can sell other goods.

MR. WICKWIRE: This is my last question: finally you make reference to the report of the Lloyd Jacob Committee. Can you point out where the evidence is that retail price maintenance is necessary for the

protection of the proprietor's trade and goodwill in his branded article?

MR. MACDONNELL: You say can we point out cases in which the right to maintain price is necessary for the protection of goodwill? Well, it seems to me that we are back at the same old point, are we not: we say that if a branded article is sold at a loss-leader price that is damaging to the goodwill, to the reputation, of that article and the goodwill of the business.

MR. WICKWIRE: Well, perhaps we are back at the same old point that there are fears expressed that it will be damaging to the branded article, but my point is: do you, or does your Association know of any evidence or facts to show that it has been detrimental to a branded article?

MR. MACDONNELL: I am not in a position to give that evidence today, but various groups of ours, notably the electrical appliance people, will be putting in evidence of that kind.

MR. WICKWIRE: I have one further question.

MR. MACDONNELL: Excuse me: Mr. George has just mentioned the Ingersoll watch case.

MR. GEORGE: I do not think that the Commission wants any explanation of that, but it just occurred to me that that was an outstanding example of what can happen and did happen.

MR. WHITELEY: There is some question as to the evidence in that case, I am afraid.

MR. GEORGE: Yes. Perhaps that is a classic.

MR. WHITELEY: It is classic in the way in which

it developed apparently from the original watch, which was not an Ingersoll watch at all but was a Waterbury watch.

MR. MACDONNELL: I have been in touch with one of our groups which is putting in a lot of evidence, and I think there will be concrete evidence along those lines.

MR. WICKWIRE: There was the question which I put to Mr. Fitzpatrick and which you rose to answer, and I am afraid I cut you off, and that was about your brief generally. Is this the brief of the executive of the Association?

MR. MACDONNELL: Yes, this brief is put in on the authority of the executive of the Association.

MR. WICKWIRE: The executive of the Association?

MR. MACDONNELL: Yes.

MR. WICKWIRE: Do you know whether or not that was after consultation with all the individual bodies comprising the Association?

MR. MACDONNELL: It was after the matter had been discussed by Committees. It was first of all studied by a sub-committee and then a full committee, and approved, according to the procedure that is usually followed in the Association.

MR. WICKWIRE: Is there some divergence of opinion amongst your constituent members about the subject of loss-leaders?

MR. MACDONNELL: Well, it is an Association of 6,700 members, and obviously it is impossible to say that every last one is 100 percent in favour.

MR. WICKWIRE: Is there some substantial divergence of opinion among your members?

MR. MACDONNELL: We have no evidence of that.

THE CHAIRMAN: Mr. Macdonnell, I was wondering if you could assist us with one of the very difficult questions in the minds of many people connected with this inquiry. You have referred to a manufacturer having the right, or rather you have said you believe he ought to have the right and may safely be left with the right to cut off supplies where his goods are being sold at loss-leader prices. You have said it is extremely difficult to define a loss-leader, but I am wondering if you would tell us what you, yourself, have in mind when you refer to the term "loss-leader" or "loss-leader prices"?

MR. MACDONNELL: I think in a nutshell it is a case where an article is being sold at a price which is fixed for the purposes of getting people to come into the store; in other words, the price is not fixed from the point of view of making a profitable sale of that article at all, it is set with a view not to making a profit on that article, but solely for the purpose of bringing people into the store so that profits will be made on other articles which are being sold.

THE CHAIRMAN: That would be what I would regard as a fairly strict definition of a loss-leader. That is, it is really a sale, maybe not at an actual loss, but for the purpose of leading people into the store in the hope that they will be able to sell other things

to those people who come in. That would perhaps exclude a case in which a retailer repeatedly or commonly sold an article for merely slightly less than what is looked upon as the standard price, might it not?

MR. MACDONNELL: Quite so.

THE CHAIRMAN: It would seem to me it would have to be a fairly substantial cut.

MR. MACDONNELL: Quite so.

THE CHAIRMAN: But of course even then you would have great difficulty in proving what was the purpose that the dealer had in mind. Your suggestion I take it, is that the decision on that difficult question as to what was the purpose of the dealer may safely be left in the hands of the manufacturers?

MR. MACDONNELL: That is it, yes.

THE CHAIRMAN: Would you go so far as to say that the position that the Association really takes is that wherever a manufacturer's goods are being sold or dealt with in a fashion that the manufacturer regards as abusive and detrimental to the good name and saleability of the product, whether it is by loss-leader methods or otherwise, the manufacturer should be in a position to deal with it?

MR. MACDONNELL: That is right.

THE CHAIRMAN: Then your position goes beyond the loss-leader field, into the field of any other activities which would have a similar detrimental effect on the product?

MR. MACDONNELL: Yes, but as I understand the law, a manufacturer already can do that; he can cut

off a dealer if he finds that dealer going in for the practice of false advertising of his article, or he can cut him off, I suggest, if he finds a dealer giving atrociously bad service so that his product would get a bad name in the eyes of the public.

THE CHAIRMAN: As a matter of fact, he can cut him off for any reason except those which are prohibited.

MR. MACDONNELL: Quite so, and we think that where he finds or he has reason to believe, as I said this morning, that the reputation of his brand and product is being damaged and its future saleability threatened by the methods used by a particular distributor he should not be called upon to continue to supply that dealer with his branded article to continue that practice, which, as I say, is having the effect of damaging his reputation.

MR. FAVREAU: If the Commission, without prejudice to the position which may be taken later on, should take the view on the one hand, for instance, that the prohibition against retail price maintenance should be maintained but that on the other hand in the case of abusive use of loss-leadering practices, for example by detrimentally reducing prices of a given article, the manufacturer should be given the right to cut off supplies -- if we should reach this conclusion, which is one of the conclusions in your report -- would there be a possibility, or would it be practicable to add that a manufacturer in such a case could only curtail or stop supplies after having made application in that respect and obtained leave therefor from some kind of

an official Board or authority?

MR. MACDONNELL: We have not considered that, sir, and I am not prepared to give an answer for the Association. We will consider it. At the present time our position is that we think the manufacturer should have the right to do it himself, without having to get the permission of the Board. I think my answer must be that we would not approve of the requirement that the permission of some board should be secured.

MR. FAVREAU: The difficulty might be that in some cases the line of demarcation between what is detrimental, or what practice is really prejudicial and what practice is not prejudicial, might sometimes be very hard to draw; whereas if, for instance, one particular set of circumstances or practices was studied concurrently by both the manufacturer and some official authority, it might be easier to arrive at a more objective conclusion as to the really detrimental nature of the practice complained of.

MR. MACDONNELL: I can see the force of that.

MR. FAVREAU: Mind you, I am not saying that this is a conclusion which I have arrived at myself, but I am merely probing it.

MR. MACDONNELL: It is a very interesting suggestion. I would suggest that one of the very reasons why people would not like that is the question of time. If a manufacturer finds that a dealer is using one of his articles as a loss-leader, and damage has been done, he wants to deal with it at once, and I am afraid that from his point of view that would be a fatal objection to the

requirement that the permission of a Board should be obtained. Of course, another point is the obvious one that it would be, we suggest, extremely difficult, or it might be in many cases extremely difficult, to convince a Board. One envisages argument on one side and the other and perhaps appeals and delay. I do not think that that would work.

MR. WHITELEY: In Paragraph 114 of the Lloyd Jacob report, upon which your brief relies to some extent, the Committee reported as follows:

"It appears to us to be contrary to the public interest for a manufacturer to use his power to cut off supplies in such a way as to restrict the growth of particular methods of trading, to impede the distribution by another manufacturer of competitive goods, or to deprive the public of the benefits of low cost systems of distribution."

MR. MACDONNELL: Yes.

MR. WHITELEY: In the proposals as far as you put them forward they appear to involve merely the exercise of discretion by a manufacturer as to when he would deprive a dealer of supplies. I did not gather from your representations that you suggested any safeguard which embraced any of the points that are mentioned in the Lloyd Jacob report. Have you any such safeguards in mind?

MR. MACDONNELL: I can only say that I think that the safeguard, as I tried to say before, is that the

manufacturer is not going to cut off a dealer or a distributor unless he feels that the reputation of his article is being damaged. What you have referred to, sir, is of course another way of putting what we have here, that we have no quarrel with the conclusion reached by the Lloyd Jacob Committee that arrangements which impose restrictions on particular goods are generally speaking to be regarded as an unreasonable restraint of trade. We accept that, but we still think -- I can only repeat it -- that manufacturers should not be required to continue to supply a man who is deliberately damaging the reputation of the goods by selling them at a loss-leader price.

MR. WHITELEY: The difficulty I find with that is that it is a matter of public knowledge that costs of distribution among various retailers vary widely.

MR. MACDONNELL: Yes.

MR. WHITELEY: The suggestion has been made, I think by Mr. Fitzpatrick, that as far as his particular company is concerned, they regard any departure from a named price as a detrimental action. In that case, there is no flexibility at all. You merely have one price. The suggestion put forward by the Lloyd Jacob Committee that the public should get the advantage of lower costs of distribution appears to be prevented if that is the type of control that the manufacturers are going to exercise.

MR. MACDONNELL: One must not forget in all this that there is the element of competition coming in. It is not a case of one manufacturer having the whole

field to himself. I think that fact in a nutshell is the answer, that competition is the balance wheel.

MR. WHITELEY: Where is the competition among the retailers of that particular product?

MR. MACDONNELL: Well, presumably there would be a number of retailers handling the product.

MR. WHITELEY: Yes, but if they all sell at the same price, where is the competition?

MR. MACDONNELL: You have got other things besides price; there is service and advertising.

MR. WHITELEY: The particular point to which I was relating it was the one in the Lloyd Jacob report regarding the advantages of low cost systems of distribution.

MR. MACDONNELL: Are you suggesting that if a manufacturer were given the right to refuse to sell to a distributor who was cutting the price all to pieces and damaging the reputation of the article -- what was the way in which you put it again?

MR. WHITELEY: I was asking you whether in your proposals you contemplated any safeguard for the public in regard to getting the benefits of lower costs of distribution.

MR. MACDONNELL: Well, you have got a whole number of retailers handling this article, and one of them undertakes to cut the price all to pieces. We say that the manufacturer should have the right to cut him off.

MR. WHITELEY: The Lloyd Jacob Committee suggested there should be some safeguard that he was not cut off merely because he had lower costs of distribution.

MR. MACDONNELL: Merely because what?

MR. WHITELEY: Merely because he had lower costs.

MR. MACDONNELL: Because the retailer had lower costs?

MR. WHITELEY: Yes, the mere fact that he had lower costs and therefore could sell at a lower price.

MR. MACDONNELL: And you are suggesting that upon our proposal there would be the danger of a retailer who had lower costs, and therefore could sell at a lower price, being cut off?

MR. WHITELEY: Yes. What safeguard have you against it?

THE CHAIRMAN: Or being forced to sell at the higher price?

MR. MACDONNELL: That retailer can get his goods from another source of supply.

MR. WHITELEY: Not those goods.

MR. MACDONNELL: He can get competing goods.

THE CHAIRMAN: But, Mr. Macdonnell, if a retailer by some ingenuity on his part, or by a combination of that and good fortune, is able to handle goods at, we will say, 10 percent lower cost than his competitors, why should he not be able to pass that, or some of it, on to the consumer if he wants to do so, and thereby perhaps build up his own business and get still more?

MR. MACDONNELL: That is a possible case I suppose, and I must say it is a hard one to answer, but I still say that is the sort of extreme case which, I say, does not invalidate the general principle that

the manufacturer should not be required to sell his branded goods to a retailer who is deliberately using them for improper purposes.

THE CHAIRMAN: That is the sort of question that Mr. Whiteley had in mind in asking you if you were considering any safeguards.

MR. MACDONNELL: I must admit that we have not worked out any definite safeguard to deal with that, but I think that is a very extreme, rare, sort of case, and I do not consider that it invalidates our proposal.

THE CHAIRMAN: Your position really is that that sort of situation would be pretty rare?

MR. MACDONNELL: Quite so.

THE CHAIRMAN: And not of much importance in the total field?

MR. MACDONNELL: That is right.

MR. FAVREAU: And I think you may add to that that if one particular manufacturer should abuse his right to cut off too many of his distributors then he would wind up with the position where he would give a monopoly to one of his distributors and be at the latter's mercy?

MR. MACDONNELL: Yes, quite so.

MR. WHITELEY: That is coming back to Mr. Fitzpatrick's point.

MR. FITZPATRICK: Mr. Chairman, as a partial answer to your question there may I say this: you made the remark that when a dealer through efficiency creates certain economies, he should be permitted, you might say to give away those economies in the way of

lower prices; but generally speaking the attitude of the dealer in regard to being efficient is not that. The very nature of our competitive system is such that his incentive to be efficient is the greater profit involved, and generally speaking, he is not too interested in giving away the produce of his efficiency.

MR. WHITELEY: But surely it is related to the volume.

MR. FITZPATRICK: It is partially related to the volume, yes, but therein lies the danger. Perhaps this is a dangerous statement, but earlier you asked for a definition of loss-leader, and I would like to go on record as saying, so far as our company is concerned, that any break in price is a loss-leader as we see it.

MR. FAVREAU: It is a leader activity; it might not be a loss-leader.

MR. FITZPATRICK: It is a leader activity, yes.

THE CHAIRMAN: Do not you mean that you regard that as a detrimental practice, not necessarily involving a loss to the dealer and not necessarily even being a leader practice but a practice which you regard as being detrimental to your business as a manufacturer?

MR. FITZPATRICK: We would prefer to ask the question, when a dealer cuts a price on our merchandise, why does he cut? Perhaps many reasons can be considered as to why a dealer may cut prices, but we would prefer to be in a position where the dealer will have no reason to cut. I am going to suggest that we are prepared to accept a certain responsibility so that the

other conditions for cutting will not exist. We say that that leads to the orderly marketing of our product, upon which our product depends. I mentioned earlier the problem of the dealer who has to stock up heavily, in our interests and in his own interests, in order to sell Sunbeam appliances at Christmas time. If he does not stock heavily, the position may arise that many dealers are beyond our reach in the way of being able to move merchandise to them over night, and considerable sales volume therefore would be lost. He must therefore have confidence that what he buys he can sell at a profit. That is a problem that is basic to our particular merchandise. At the moment the dealer has absolutely no confidence in Sunbeam appliances.

THE CHAIRMAN: Well, Mr. Macdonnell, we wish to thank you and your delegation for the very careful presentation you have made today. I think a number of questions have arisen in respect to some of which you indicated that you would supply some further information. It appears to me that perhaps you might wish to consider the advisability, at a later date, of making a further formal submission arising perhaps out of the discussions which have taken place here today, rather than merely answering the two or three questions about which you said you would obtain information. It might enable you to give a more thorough treatment to the subject than by answering just those two or three questions. You might like to consider that and perhaps you will let us know in the

next little while whether you will desire to make subsequent representations.

MR. MACDONNELL: I will take that up with the Association.

THE CHAIRMAN: That could be done in the hearing in Montreal or Toronto, or at the final hearings in Ottawa, if we have completed our hearings across the country by that time.

MR. FAVREAU: Can we take it, Mr. Fitzpatrick, that Sunbeam intends to file a brief, if I understand the situation correctly?

MR. FITZPATRICK: After my outspoken comments here today, they may decide not to. It was their intention to be vocal in Toronto. They have not submitted a brief, as I said before.

THE CHAIRMAN: We have not yet received any formal notification.

MR. FITZPATRICK: No, I am aware of that.

THE CHAIRMAN: If they desire to do it in Toronto, it would be as well to let us know as soon as possible because there are a number of people to be heard in Toronto.

MR. FITZPATRICK: I know that most of our views have been already submitted to the C.M.A., and I believe you already have notification of their request for hearing in Toronto, so it is a question of whether we can gather other factual information beyond their report, which would be of help to you. I have mentioned our difficulties in compiling information. One thing which we consider is an important factor in

this program is that the dealer who, at the end of all this, is the man who is going to suffer, and suffer most probably very quickly, unfortunately is in the position where he cannot subject himself to being heard at a proceeding such as this. In the first place he is not qualified, and in the second place, from the monetary standpoint he probably could not afford it. I think that is a rather sorry situation.

MR. WHITELEY: There are, of course, associations of dealers, some of whom have indicated their intention to appear.

MR. FITZPATRICK: There are, but if I may add this, I have found it most difficult myself to express some of our thoughts on this problem. Perhaps I might offer this suggestion: some of these associations are growing stronger, and some of them are growing stronger through force of circumstances, if I might be rather subtle. Perhaps five years from now they might be well qualified in the way of having counsel and so on, but at the moment they have been somewhat negative groups who have not had to face an enquiry of this type, and I suggest that in many cases, having personal knowledge of some of the people involved, they are not fully qualified.

THE CHAIRMAN: That does not apply to all of them.

MR. FITZPATRICK: I know it does not. This is a very wide open observation for me to make, but it is a problem.

THE CHAIRMAN : There are many organizations of

many years standing, and I know there is a good deal of interest in this matter.

MR. FITZPATRICK: I know that most of them are extremely concerned about presenting themselves before your Committee.

THE CHAIRMAN: That is a matter they will have to decide for themselves.

MR. MACDONNELL: My information is that the final hearings will be in Ottawa. I do not know whether you can give us any indication when that will be.

THE CHAIRMAN: We cannot fix a date yet. It is difficult to say when we can complete the hearings across the country as yet, because new requests for hearing are coming in, and we may have to visit some cities that we have not yet covered, but we anticipate that very likely it will be by August.

Then the hearing will adjourn at this time until ten o'clock tomorrow morning.

--- Whereupon the hearing adjourned at 3.35 P.M. until 10.00 A.M., Thursday, 20th May, 1954.

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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS-LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 2

OTTAWA

MAY 20 1954

RESTRICTIVE TRADE PRACTICES COMMISSION

IN THE MATTER OF

an inquiry

Regarding Loss-Leader Selling

Hearing held (in public) in the Conference Room, Dominion

Bureau of Statistics Building, Ottawa, Thursday, 20th May, 1954.

PRESENT:

C. Rhodes Smith, B.C., M.A., LL.B., B.C.L.,
Chairman.
Guy Favreau, Q.C., B.A., LL.B.,
Member.
A. S. Whiteley, B.A., M.A.,
Member.

APPEARANCES:

Mr. N. W. Wickwire, Q.C.,)
and) Counsel for the Commission
Mr. Paul Gerin-Lajoie)

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Thursday, 20th May, 1954.

---Upon resuming at 10.00 A.M.

THE NATIONAL COUNCIL OF THE BAKING INDUSTRY

Represented by:

Mr. A. May (Managing Director)

Mr. W. D. Heagle (Chairman)

Mr. G. C. Morrison (Vice-Chairman)

Mr. G. G. Anglin (Director)

THE CHAIRMAN: The first presentation today will be by the National Council of the Baking Industry, and I believe that Mr. May will be presenting a brief for them.

MR. MAY: Mr. Chairman and Messrs. Commissioners, we have a delegation of three. Is it all right for them to come forward?

THE CHAIRMAN: Yes.

MR. MAY: The first is Mr. Walter D. Heagle, Chairman of the National Council; then there is Mr. G. C. Morrison, Vice-Chairman of the National Council and Mr. G. G. Anglin of Saint John, a director of the National Council.

THE CHAIRMAN: Perhaps you gentlemen would like to sit at the table so that it will be convenient for consultation.

I think perhaps, Mr. May, it would be best to commence with the reading of the brief, and for you to make any comments as you go along which you desire to make. Then following that, Counsel for the Commission or members of the Commission probably will ask questions

for clarification and to ascertain exactly what may be your point of view on any matters which are not quite clear from the brief itself.

MR. MAY: Mr. Chairman, with your permission our Chairman, Mr. Heagle, would like to open with a few introductory remarks.

THE CHAIRMAN: Very well.

MR. HEAGLE: Mr. Chairman, and members of the Restrictive Trade Practices Commission, we of the Bakery Industry of Canada appreciate this opportunity of presenting to you our experience as affected by loss-leader selling. Our experience in dealing with loss-leader selling indicates that the practice of loss-leader selling and the buying practices which it develops constitute a very real and serious threat to the general economy of our nation. We are confident that your committee will produce a proper and productive solution only if sufficient factual information is presented to you for your serious and constructive consideration. Sufficient factual information is not going to be easily or quickly obtained by you because of the following reasons: the people who, for the most part, should be giving you factual information are handicapped. First of all they feel incapable of presenting their case satisfactorily; secondly, they are fearful of reprisals; thirdly they have a frustrated feeling that the presenting of evidence here is hopeless; fourthly, an organization concerned with this problem of loss-leaders is almost certain to have in its membership, people who are using the loss-leader selling tactics.

Before examining the problems created by loss-leader selling, we must understand and answer three basic questions: first, what is the purpose of a business or industry; second, who does a business or industry consist of and who are adversely or constructively affected by its actions; third, what factors generate the energy which develops a strong and progressive national economy.

The purpose of the bakery industry is twofold: first, our job is to provide the Canadian people with a considerable variety of bakery foods efficiently, of good nutritional value, and in a form that the consumer will enjoy eating them at a price made possible by capable, aggressive operations. The second part of our job is to operate our bakeries in a manner so that we will provide the maximum towards our national economy, as an industry. In the business of every bakery we now have five partners, each enjoying privilege, responsibility and opportunity. These modern-day partners consist of: one, the consumers; two, the suppliers; three, our labour; four, the government; and five, capital or ownership. These five partners in co-operative action create the well-being and the standards of living for all the people of our nation. The striving for personal satisfaction and profit by the individual and corporation is the generator of energy which develops a strong and progressive national economy.

It is the duty, I am quite sure, of your committee and we bakers to provide a solution to this practice for which I believe the term "cheater leader selling" is more

appropriate than the term "loss-leader selling", which will encourage and assist the industry in efficiently and fairly doing its twofold job of serving the public faithfully and contributing our full share to the nation's well-being.

I thank you, gentlemen , for this opportunity of speaking, and now Mr. Arthur May will present our brief.

THE CHAIRMAN: Thank you.

MR. MAY: Mr. Chairman and Messrs. Commissioners; this brief is submitted by the National Council of the Baking Industry, which is the only national trade association of the baking industry in Canada. Its membership is comprised of regional - provincial - and local bakery associations - as well as of individual baking companies from all parts of Canada and all sections of the industry. The total sales of our members are, we believe, equal to not less than eighty percent of the commercially baked bread and other bakery products in Canada.

A committee officially representing the National Council of the Baking Industry appeared before the Committee appointed to study Combines Legislation in 1950 under the Chairmanship of the Honourable Justice J. H. MacQuarrie. A substantial part of the brief which we filed with this Committee dealt with the use of bread as a loss leader - and the monopolistic trends in the Canadian baking industry that we believed this practice was accentuating.

We concurred in the conclusion on loss-leader

selling reached by that Committee -- that:

".....the loss-leader device

is a monopolistic practice which

does not promote general welfare and

therefore is not compatible

with the public interest."

We were therefore disappointed to learn from the interim report that the Committee did not regard loss-leader selling at that time (October 1951) as being serious or presenting "any immediate danger". Whatever might have been the extent of loss-leader selling within the many industries that were reviewed by the Committee - the baking industry was, at that time - and had been for years - in the throes of an almost permanent loss-leader selling condition that was then - and continues to be - of a most serious nature.

The baking industry is one of the very few businesses in Canada that, each succeeding year, sees fewer establishments still in business at the end of the year than there were at the beginning, - as the following figures show -- and these show a total of baking establishments in 1938 of 3,231 declining by 1952 to 2,585. I may say that the figures for Newfoundland are included since 1949. I took the trouble to check with the Dominion Bureau of Statistics to see if there had been any change in the method of determining them over the 15 year period and they said there had not, with one exception that since 1950 they have included department stores who operate their own bakeries;

but apart from that the figures are based upon a consistent method of determining the number of bakeries in Canada.

MR. FAVREAU: You do not have figures for the actual number of bakeries for which Newfoundland accounts?

MR. MAY: No, but if I was to give an estimate it would not be any more than about 15.

MR. FAVREAU: Twelve or fifteen?

MR. MAY: Fifteen or twenty, that would be about right.

The only interruption in the constant decline in the number of bakery establishments in Canada is for the years 1946-47, which was undoubtedly due to many veterans on discharge from the services going into the business at that time - after which the decline was resumed and at an accelerated rate.

During this period sales of bread and other bakery products increased from \$78,535,333 in 1938 to \$260,181,410 in 1952. A substantial part of this increase is due to the general rise in prices which occurred, but also it is due, of course, to the increase in population and to the improvement in the general standard of living.

Over this fifteen year period this country had experienced a sustained period of expansion and prosperity without parallel in our history. Yet, withal, while dollar sales increased 331 percent -- the number of bakery establishments declined 20 percent.

Also, during this fifteen year period, there have been many new entrants into the baking business every

year. But the result, nevertheless, is a net loss of some 700 establishments.

One of the most important contributing factors is the increased mechanization of bread baking that has been very marked over the past two or three decades. While such changes bring increased efficiencies and lower manufacturing costs -- because of the relatively higher capital outlays required to finance them -- and the large volume of business necessary to support their successful operation -- they do have a tendency to make large bakeries larger still.

However, we firmly believe that another major contributing factor to the high rate of business mortality is the effect of the extent to which bread is used as a loss-leader. Whatever may be the motives of those who employ bread as a loss-leader, we believe there can be no doubt as to its predatory effect.

The particular examples which follow deal with three typical loss-leader practices. The examples and supporting data are taken from the Provinces of Ontario and Quebec. However, similar practices are prevalent in other parts of Canada and all of them occur in varying degree from the Maritimes to the West Coast.

The usual selling price of a standard 24 ounce loaf of white bread in chain groceterias today in Ontario and Quebec is fifteen cents a loaf. The usual price for the same loaf in independent grocers and by bakers in their sales direct to the consumer is nineteen cents.

Some independent grocers, through co-operative

buying, do obtain bread which can be sold at fifteen cents in competition with the chain groceterias -- but this condition is limited to a few areas and is often conditional on a limited supply of the cheap bread, and very often the sources from which such cheap bread is available to the independents are precarious.

However, for all practical purposes, it should be accepted that the difference in price between chain groceterias, on the one hand, and independent grocers and direct selling bakers, on the other -- for a standard 24 ounce loaf of white bread -- is that between fifteen cents and nineteen cents, respectively, or four cents per loaf.

In the recently published material on loss-leader selling compiled by the Director of Investigation and Research, there is included data as to the relationship of prices between chain groceterias and independent grocers. For all the products listed, the comparison is shown as follows: -

British Columbia (229 items) an index of 100.0 for the Independent Grocers' prices and an index of 94.7 for the Chain Groceterias' prices.

Ontario (174 items) an index of 100.0 for the Independent Grocers' prices and an index of 95.9 for the Chain Groceterias' prices.

Quebec (115 items) an index of 100.0 for the Independent Grocers' prices and an index of 92.6 for the Chain Groceterias.

Bread is not included in any of these tables as a separate item - in fact, it is not clear whether it is included at all in the British Columbia or Ontario

data. In the Quebec data, bread is included as "bread and biscuits" in a group of nine items.

The one bakery product that is permanently used with some element of loss-leader in the price is the standard 24 ounce loaf of white bread. On the basis of the 19 cents per loaf for independent grocers and direct sales by bakers, and 15 cents for the chain groceteria, the comparable data for bread should read as follows:

"An index of 11.0 for Independent Grocer and direct bakers' Sales and an index of 78.9 for the chain groceterias."

Therefore, the average selling price for all goods sold by chain groceterias is 4.1% less in Ontario and 7.4% less in Quebec than the average selling price of the independent grocer. Bread, however, is sold for 21.1% less.

In comparison, cigarettes - which already are under consideration in this matter, - in Ontario - have a general price difference between chain and independent merchants of 33 cents to 30 cents per packet of twenty, which shows, on the basis of 100.0 for the independent, a chain store index of 90.9.

We submit that these comparisons justify the conclusion that this 21.1 percent lower price for bread, compared to a 4.1 percent and 7.4 percent average lower price for other foods in Ontario and Quebec, respectively, results from the practice of pricing bread - to some extent at least - for use as a constant loss-leader item.

There is undoubtedly a high degree of efficiency in modern chain store merchandising. It is equally true

that the benefits of this efficiency are, by and large, passed on to the consumer. The Canadian Baking Industry most certainly has no desire to see any limitations of any kind imposed on the legitimate growth and extension of chain stores nor to see modified in any way the benefits which the public does derive from them.

Nor are we suggesting that the price of bread in chain stores should not be lower than for other types of distribution. Whatever efficiencies are inherent in modern merchandising have, of course, every right to be reflected in bread prices. But we are convinced that the existing 21.1 percent price difference is greater than can be established on any proper basis of cost considerations.

It is probably impossible to demonstrate accurately, statistically, to what extent the element of loss in this 21.1 percent price differential does damage the baking industry (as well as the independent grocer). The following example illustrates what happens when a new super market opens in an urban area already served by bakers and independent merchants.

In October 1953, one of the large chain groceterias opened a new store in London. This store burned down about three months later. Here is what happened to one baker's sales in the area on a before - during - and after comparison: - the average per week six weeks prior to the store opening was 1,456 loaves, which dropped to 1,333 for the six weeks period while the store was open, and then rose again to an average of 1,438 six weeks after the store was burned down.

The salesmen's earnings six weeks prior to the store opening were \$70.97 on an average, and they dropped to \$67.14, and then rose again after the store was out of business to \$70.34.

The average weekly decline in sales was 8.45 percent and the average weekly decline in salesman's earnings was \$3.83 per week or 5.46 percent.

It is not to be argued that all this loss of sales by the baker is to be attributed to whatever measure of loss-leader pricing was in effect for bread. People in the immediate neighbourhood might well adopt the habit of buying bread from the new store, although - all else being equal - the housewife would probably prefer to have a product that has to be purchased as frequently as does bread delivered to her home than to be running out to a store every day to buy it.

Also, some part of the loss of sales by the baker would have occurred on the strength of what would be a justifiable price difference for bread between the store in question and the baker's delivered price at the home.

Notwithstanding considerations of this kind, we believe it is indisputably a fact that some part of the loss -- and probably a substantial part of it -- was due to whatever element of loss was included in the price of bread.

Until recently, in Ontario and Quebec, with minor and usually short-lived exceptions, the use of bread as a loss-leader was confined to whatever element of loss determines this four cent spread. Lately, however, loss-leadering of bread has been extended.

Firstly, it has become a fairly common practice to give away up to thousands of loaves of bread on the occasion of the opening of new "super markets", and, on other occasions, with others who compete in the same area usually following suit.

Secondly, there has developed a condition of sporadic selling of bread at further substantial price reductions. These outbursts also are invariably joined in by competitors in the areas in question.

The prime objective upon the opening of a new "super market" is, of course, to achieve the maximum customer traffic as quickly as possible. Opening promotions usually include "give away" attractions that frequently run the gamut of the durable goods field. Often there are included in these "give aways" food items which also often are in the form of giving away bread up to many thousands of loaves. Here is a typical instance of one such free bread campaign: -

In Brantford, a new super market was opened in November 1953 with considerable fanfare including "give aways", which developed until, according to our information, the two chains operating in the area -- over a period of about four weeks -- had given away upwards of six thousand loaves of bread each.

The following shows the immediate and apparent lasting effects of this free bread campaign on two bakers who distribute bread in Brantford:

The figures are there and I will read the summary:

The average weekly sales for four weeks before the free bread were 19,891; during free bread the figure was 18,749; after the free bread stopped for four weeks the average was 19,341; the average loss to the baker while free bread was available was 6.25 percent, and the apparent permanent loss to the baker was 2.76 percent. That is for bakery No. 1.

As regards bakery No. 2, operating 19 routes, their average weekly sales four weeks before free bread were 28,920; during free bread they were 26,325, and after the free bread stopped they were 28,368. This baker operates throughout the entire City of Brantford and the surrounding rural areas. The five routes most affected by the free bread are as follows: -

Then the figures are set out for the five routes, and they show that the average loss for the five routes while free bread was available was 11.94 percent, and the apparent permanent loss 9.18 percent.

The five routes most affected show the following comparison in salesman's earnings: -- and again the figures are set out for the five routes showing an average decline in earnings during the four weeks when free bread was available of \$3.91 per week or 5.77 percent, and the average decline in earnings four weeks after free bread was \$4.24 per week or 6.26 percent.

There is a considerable additional loss to the bakers who are affected than just the immediate and permanent loss of sales. Bread is a perishable food. Bakers have to estimate with reasonable accuracy their customers' requirements beforehand. Often these free

bread campaigns are announced too late for the bakers already serving the areas to adjust their forecasts. The result is an increase in unsaleable stales.

Nor should the immediate or apparently permanent sales losses be regarded as not very substantial percentage-wise. This sales loss pattern will be repeated in some measure every time a free bread campaign is promoted and the cumulative losses eventually become damaging beyond repair.

Incidentally, this is as good a place as any to indicate what the decline in the number of bakers means within a single city.

In 1938 there were operating in Brantford and immediate area 13 bakers. Today there are only 3 bakers who operate plants in the same city. Considerable quantities of bread are now shipped in from outside plants.

In addition to what we regard as a permanent loss-leader selling of bread at the four cents per loaf differential - a practice is becoming widespread that represents even more lethal predatory price-cutting of bread prices.

A typical example occurred in January 1954 in Montreal, which the Director of Investigation and Research reported upon yesterday. The situation began with a leading chain offering bread - in full page and half page advertisements - at nine cents per loaf unsliced and ten cents sliced. This was a further cut of five cents per loaf which resulted in a price 47.2 percent lower than the normal selling price of the independent

grocer and direct selling baker. Competing chains and many independents immediately followed suit and this price condition continued for about a week, although it continues to this day among some of the independents -- who probably are still smarting from the impact of the initial price war.

This, of course, is loss-leader selling beyond all question and within any definition of the term "loss-leader".

Incidentally, we recognize the difficulty of laying down a definition of the term "loss-leader" that is applicable to all trades or products. The baking industry, we believe, regards the term "loss-leader" for bread and other bakery products as a price lower than a full recovery of all costs - both for baker and the merchant - plus a normal average mark-up. Excluded from this definition is day old bread and staling bakery products which are reduced in price for immediate sale, although this can become part of the permanent loss-leader condition if more bread is ordered than it is expected will be sold before staling, for the express purpose of using the staling product in "bait" selling.

The National Council of the Baking Industry arranged for an independent survey to be made by Gruneau Research Limited in an attempt to measure the effects of this particular Montreal situation.

The results of this survey were forwarded to the Director of Investigation and Research. Inasmuch as this was tabled in the report which Mr. MacDonald presented yesterday, I think I will omit reading it at this

time and I can go on to the middle of page 14:

It is very difficult to measure accurately results of particular price cutting situations. Other factors, such as weather conditions, etc., are always present that might modify apparent conclusions. But bakers are in no doubt as to the fact that they invariably result in substantial immediate loss in sales and that these lost sales are never fully recovered.

Instances of this sort of price slashing are becoming more common and have occurred from time to time in the principal cities throughout Ontario and Quebec. Here is a second example.

On March 12-14, 1954, the two large chain grocerias operating in Chatham offered regular white bread at twelve cents per loaf with the following result for one baker: this gives the total for his 14 routes in the Chatham district. I will not read the figures, but the effect was a loss in sales of 441 loaves per week-end -- this was a week-end study -- or 4.31 percent, of which 151 loaves per week-end or 1.47 percent was recovered after normal prices were restored.

The examples given here are not selected examples. They include all the data furnished by each baker submitting figures. They include the data for all who were asked to supply data. We believe the examples are typical and would show a similar pattern for all bakers operating in the areas in question.

We have not included in this brief copies of typical advertisements covering the loss-leader practices

which we have been referring to. But the practices are sufficiently common to be the subject of newspaper advertisements across Ontario and Quebec by the score every week.

We are of the opinion that the drastic reduction in the number of bakery establishments over the past many years stems to a very large degree from the use of bread as a loss-leader -- and particularly from the present four cent spread or its equivalent in the past.

We are further convinced that if the additional loss-leader practices of free bread campaigns and sporadic additional drastic price cuts are not stemmed, the rate of mortality in the baking business will increase. The repetitive use of these two predatory loss-leader devices is beyond the capacity of most independent bakers to cope with or to survive, when added to whatever loss factor is contained in the permanent four cent spread.

Bread is, of course, an ideal loss-leader food item. It has to be purchased frequently -- usually daily. It is a standard product with a well known selling price. Cut prices for bread are readily recognizable as a bargain. The objects of the use of a loss leader undoubtedly include: (a) to bring customers into the store to avail themselves of that particular bargain; (b) to induce sales of other goods on which a profit is made (and it is reasonable to assume that whatever losses are incurred in the sale of the loss-leader item will be recouped in the sale of these other goods which might well be priced higher than would be necessary if no loss-leader items

were sold); and (c) to create the impression that all goods sold by the merchant in question are equally a bargain -- which, of course, is impossible.

We further believe that it is this ideal nature of bread as a loss leader that leads chain grocers to go into its manufacture on their own account. Recently, the United States Department of Justice instituted a civil anti-trust suit against the largest of the U.S. chains - one, incidentally, which operates extensively in Canada. This suit was settled under a consent judgment, under which the company agreed to refrain from certain practices included in the complaints.

You are undoubtedly much better informed on this matter than we are and will be aware that the U.S. Government sought, through the court action which it instituted, to require the company to separate its manufacturing and processing businesses from its buying and selling operations.

One thing that this legal action does demonstrate forcibly is that the United States Department of Justice has come to have a very serious concern as to whether or not the public interest is adequately protected -- even although the transactions of the company in question were based on what would appear to be low prices.

There would be no reason to be too concerned if bread was sold at less than full cost plus a normal mark-up by those concerned only with the manufacture or sale of bread, for time itself and the losses incurred would eventually correct the situation. There exist, however, the most serious implications when bread is singled out

as a loss-leader by a company to whom bread is but one of many items handled. These implications are even more serious when this manipulation of predatory price-cutting of bread can be used (as it is) in selected stores or in selected areas.

We believe that an inquiry should be undertaken in this country to determine whether or not, and to what extent, the public interest in this country is in jeopardy as a result of the operation by merchants of their own manufactories such as baking, and to determine to what extent this practice has been responsible for the maintenance of bread as a permanent loss-leader food and for the sharp decline in the number of bakery establishments.

We recognize that this whole problem of loss-leader selling must be resolved with regard to the public interest, and not with regard to the special interests of either the baking industry or large merchants. This brief so far has been largely factual with regard to the baking industry. Your letter of March 22, 1954, advising us of this loss-leader inquiry, indicated that you were desirous of having detailed factual data and we have sought to meet your request for such information.

We do, however, believe that the damage that has been done to the baking industry as a result of the loss-leader atmosphere in which it is obliged to live does concern the larger public interest. The baking industry in Canada today renders an essential basic food service. The public interest is not well served

when an important nation-wide industry of this sort is obliged to continue in a state of depression.

We feel it should be made very clear that the baker who is most seriously affected by the practices in question is the smaller independent baker. The situation is, of course, serious for the whole industry - large bakers included. But, obviously, the larger baker -- who distributes bread across wide geographical areas and in a variety of classes of distribution -- is very much better able to survive than is the smaller business. It is not necessarily a question of efficiency -- the smaller baker may be and often is equally efficient, but if he finds himself in the midst of unfair trade practices with respect to the bulk of his sales his ability to survive is most seriously in jeopardy.

LABOUR

The industry employs some 35,000 employees. Labour conditions within any industry can be no better than the general well-being of the industry itself. And conditions of labour in the baking industry, as to hours of work and rates of wages, are certainly not good.

The Department of Labour compile monthly hours of work and earning statistics for the manufacturing trades in Canada. Here is a comparison from their compilation as of January 1, 1954:

	Average Hours <u>Weekly</u>	Average Hourly <u>Wage</u>	Average Weekly <u>Wage</u>
All Manufacturing Industries	38.6	\$1.40.4	\$54.19
Bread and Bakery Products Only	43.0	\$1.07.08	\$46.35

Figures are listed separately for sixty industry classifications. The baking and bakery products industry has the longest average hours of work per week in the entire list. Only eleven of these classifications out of the sixty show lower average earnings and these are principally in the textile trades where female labour predominates. In the baking industry male labour predominates. Confirmation of these figures will be readily available from the Canadian Labour Unions concerned with this matter.

The Baking industry has no desire to see labour conditions of this kind perpetuated and certainly it is not in the interests of labour. It makes it extremely difficult to resolve labour-management problems and to acquire and hold the necessary apprentices and other types of workers. Nor do we believe that the public of this country desire to buy any product at prices that impose such conditions on the people who are employed in the manufacture and distribution of one of our most essential food services.

In a review of the Canadian economy, the Right Honourable C.D.Howe, Minister of Trade and Commerce, recently stated:

"It is the job of government to create
a climate favourable to sound economic
development."

We concur in this concept.

Industrial development in our type of economy becomes impossible in the absence of reasonably adequate profits. We believe that profits in the baking industry

have been and continue to be inadequate and far short of being commensurate with the capital employed and the measure of the service rendered.

Two of the largest bakers in Canada today -- both with regard to capital invested and volume of sales -- are manufacturing and distributing, on the basis of our best estimates, each approximately twenty-three million dollars worth of bread and bakery products annually. The profits shown on the last published annual statement of one of these companies (year ending June 30, 1953) were \$166,946.00 -- equal to about three-quarters of one per cent on sales. The other company's profits, on their last annual statement (year ending December 31, 1953) were \$306,662.00 -- equal to 1.33 percent of sales.

Both these companies operate many bakeries and distribute bread in most sections of Ontario and Quebec. Their operations are probably typical of the baking industry generally in these areas.

Taxation Statistics 1953 -- a Department of National Revenue compilation of tax returns for the 1951 tax year, for the Bakery Products Industry -- reports on 215 corporate tax returns. Of these sixty-six lost money in 1951. The total of all returns included for the industry shows a net profit of 3.95 percent before taxes and 2.25 percent after taxes. These totals include biscuit manufacturers who are included in the compilation as part of the baking industry and who most certainly have a much higher profit ratio than does the bread and cake baker. It is a reasonable assumption

that the average baker's profits in Canada today are substantially less than 2 percent on sales. This compares with an average profit of 10.07 percent on sales before taxes and 5.61 percent after taxes for the 10,854 manufacturing companies included in this tax report.

There are other public interest factors involved in this question of loss-leader prices for bread. When an industry becomes unduly preoccupied with price only -- or with uncontrollable pricing situations that are not properly based on costs -- the quality of the product inevitably begins to deteriorate. The industry then finds itself unable to maintain or improve the quality of its products or the efficiencies of its service. Capital -- so necessary for the modernization and improvement of industry begins to dry up for capital is fluid and flows naturally towards those investment opportunities that seem to ensure adequate returns.

In areas where loss-leader practices prevail, competing bakers, as a condition of survival, have to stay competitive as to price and also as a condition of survival have to avoid sustained or continuing losses. Some are inevitably driven towards such alternatives as the following:

1. Cutting of ingredient costs to the lowest point possible, and this sometimes by reducing the proportion of the more expensive ingredients, which can result in a loaf of reduced nutritional quality. The public interest can never be served under such a circumstance.

2. Inasmuch as those who resort to the loss-leader selling of bread operate only in areas of mass population and accept no responsibility to those who live outside such areas, the price of bread must eventually be increased if the sparsely settled areas are the only areas left to those who do accept the responsibility of serving the whole community.

Indeed, it is not improbable that prices for bread are higher to the less populated areas today than they would be if the cream of the market was not constantly being skimmed off the top through loss-leader practices.

If this is so, and we believe it is, then some of the loss-leader pricing of bread is subsidized by the higher price charged customers who do not have access to the loss-leader areas, and we do not believe that this is in the larger public interest.

3. Other uneconomic and undesirable practices develop. For example, in an occasional area smaller independent bakers are marketing an 18-20 ounce loaf of bread to resemble the standard 24 ounce and offering it for sale at a price competitive with the loss-leader priced loaf. The loaf usually is marked correctly as to weight

in small type yet nevertheless there is an element of consumer deception involved in this sort of thing. The majority of bakers are all too keenly aware of the undesirability of practices of this kind and its potential danger in the destruction of public confidence in bakery products and the industry generally.

Finally, reference is made in the compilation of material by the Director of Investigation and Research of the Combines Investigation Act to three inquiries that have reviewed this question of loss-leader selling in Canada (1935), in the United States (1928-1934), and in the United Kingdom (1949). All three recognize -- and state plainly -- that damage to the public interest is inherent in loss-leader selling. All three condemn it as do the conclusions of the MacQuarrie Committee. Indeed, every inquiry that we know of that has reviewed loss-leader practices has come to the same conclusion -- that they are harmful and undesirable.

Invariably the difficulties of enacting legislation to correct these and other unfair trade practices are attached to these conclusions.

We do not feel competent to determine just what is practical or possible in the way of corrective legislation. But we are convinced that it is not beyond the capabilities of those who are competent in these matters to devise the necessary legislation or adequate optional correctives.

If all who have concerned themselves with this problem of loss-leader practices condemn them, surely it is not beyond the capability of government to devise a corrective.

One of the recommendations of the Royal Commission on Price Spreads (Canada 1935) to deal with this problem was the establishment of a Fair Trade Board. This was implemented by Parliament in July 1935, in the establishment of a Dominion Trade and Industry Commission.

This Commission did function effectively over the years and many unfair trade practices did come before it for review; many were resolved and corrected as a result of the hearings which it held.

On occasion, some of the loss-leader practices which plague the baking industry and which have been outlined in this brief were dealt with by this Commission and were resolved.

This Federal Trade and Industry Commission had very limited powers to enforce any findings that it might have reached. Nevertheless it was effective. Existing anti-combines law makes it impossible for parties to a dispute to attempt to resolve problems of this kind on their own account. The right, therefore, of parties to a dispute to attempt to resolve unfair trade problems themselves has been taken away from them.

Yet there is much to be said for the replacing of this right to meet and discuss problems now denied with the opportunity for such conference -- under the jurisdiction of a competent government authority. Men

in business have a natural faculty of seeing their own side of a problem to the exclusion, in a large measure, of any other point of view. Yet we believe that not many Canadian businessmen deliberately adopt unfair trade practices -- including loss-leader selling -- with any particular malice.

The Federal Trade and Industry Commission was abandoned. We do not know what special considerations led to it being done away with. We do know that it was born on the recommendation of what is probably the most extensive inquiry held in Canada into the affairs of Canadian business as a whole.

It was recommended by those who had sat for many weeks reviewing unfair trade practices in Canada -- and who deemed something in the nature of the sort necessary to correct the many business abuses that were laid bare at that inquiry.

We do not think this Commission was abandoned without good reason. If one of the major reasons was that the operation of such a Commission might well operate at variance to anti-combines law generally, we feel it would have been better to have corrected its powers and operations so that no such conflict remained.

The complexity of the loss-leader problem -- as well as the complexity of other undesirable and unfair (from the standpoint of the public interest) trade practices -- makes it almost impossible to enact specific legislation that will work. Certainly we do not believe that 498(c) is likely to be of any avail as a corrective. Any prosecutions under this section of the

Criminal Code -- for "selling goods at prices unreasonably low, having or designed to have the effect of substantially lessening competition or eliminating a competitor" -- are (a) likely to be impossible of proof; and (b) likely to be invariably in the nature of an inquest rather than a cure. The patient will almost certainly be dead before the prosecution gets before and through the courts. Surely something that will operate more speedily and likely to be more effective is necessary.

Within our limited competence to recommend corrective legislation in this matter, we urge your serious consideration to this our recommendation.

(a) That there be established a board of inquiry and regulating authority for the hearing of complaints as to loss-leader and other harmful trade practices -- preferably as a branch of the Combines Investigation Department.

(b) that this board be given adequate powers to arrange conferences or hearings at which specific complaints on loss-leader and other harmful trade practices will be reviewed and, if possible, resolved.

It is our firm conviction that the only way to deal with this matter of unfair trade practices is to provide a meeting place between those who feel that they have just complaints and those against whom they direct these complaints -- under the jurisdiction of a government

body. It is also our firm conviction that many of the loss-leader practices prevalent today can and would be resolved before such a government authority -- expeditiously and without recourse to costly and slow legal processes.

If such a board or authority functions under the jurisdiction of the Combines Investigation Department itself, or some other branch of the Department of Justice, and therefore under the jurisdiction of competent government officials -- it must inevitably follow that its work will be dominated by public interest considerations. We cannot conceive of such a board arriving at any time at decisions that violate in any measure the interests of the public at large.

THE CHAIRMAN: Mr. May, do you wish to offer any comments or observations concerning the brief at this time before any questions are asked?

MR. MAY: No.

THE CHAIRMAN: I think perhaps we might look at the brief in the sections in which it is drawn. The first problem which you raise is one dealing with what you regard as a permanent loss-leader situation in the industry, and you refer to it particularly in connection with the use of the standard 24 ounce loaf. Perhaps it might help us if you could tell us just what you mean by the standard 24 ounce loaf. In what respect is it standard?

MR. MAY: Well, if you go to a store and buy a loaf of bread, they give you a standard 24 ounce loaf of bread, as compared with a raisin loaf, a specialty

loaf, a brown loaf or a whole wheat loaf.

THE CHAIRMAN: Do you mean that the ingredients are the same regardless of the bakery?

MR. MAY: No. The Government does lay down standards under Health and Welfare, and the Food and Drugs Act, as to what may go into white bread. The ingredients may vary but it is a readily recognizable commodity, the standard 24 ounce loaf of bread. That represents 95 percent of our bread sales.

THE CHAIRMAN: It does not necessarily follow that the bread will all be equal in quality simply because it is described as a standard loaf?

MR. MAY: No.

THE CHAIRMAN: Most people prefer bread from one baker rather than from another.

MR. MAY: And the formulae for the standard loaf will vary between bakers.

MR. MORRISON: In Ontario and Quebec the law says that a loaf of bread must weigh 24 ounces twelve hours after it is baked. I think that is the wording of the Act under which we operate, and it is enforced legally.

THE CHAIRMAN: And that does vary in other parts of the country?

MR. MAY: Yes.

MR. MORRISON: In some parts of the West the standard loaf is usually 16 ounces or 20 ounces.

MR. HEAGLE: In Saskatchewan and Alberta it is 16 and 20 ounces.

MR. MAY: And in British Columbia it is 15 and

16 ounces.

MR. MORRISON: In Ontario a 16 ounce loaf is permissible, but the sale for some reason, is very limited.

THE CHAIRMAN: We wanted to get that point clear. Now I believe that counsel will probably want to ask some questions concerning the brief.

MR. LAJOIE: Mr. May, I believe you were here yesterday when the Director of Investigation and Research explained that the role of counsel in this matter was twofold: first of all, to help persons submitting briefs to bring out every important point in their briefs and make everything as clear as possible, and secondly, to help the Commission itself in finding all possible data which would be of any use to them in preparing their reports. No one should feel that counsel in this matter are acting for any adverse party. Now, first of all, I should like to ask you for purposes of the record, what is the National Council of the Baking Industry, exactly? Your brief says that it is a national trade association of the Baking Industry and that its membership is comprised of regional, provincial and local bakery associations as well as of individual baking companies. Can you tell us approximately how many associations you have in the Council?

MR. MAY: Well, perhaps I can explain it to you in this way: during the War, they worked out mutually with the Government questions of supply and questions of control. At that time it was comprised entirely of local, provincial and regional associations, or

representatives of them, but the character of the Council is changing. We still retain the effective membership of some associations, the Ontario Bakers' Association, the Maritimes Bakers' Association, the Montreal Bakers' Association, and so on, but also it now operates on a direct membership basis. Therefore it is a little difficult to explain exactly. We claim to represent, of course, all those associations who are associated with us, and on top of that we represent probably some 500 or 600 individual bakers.

MR. LAJOIE: Could you give us a rough idea of the number of associations?

MR. MAY: Three, I think would be all the associations we represent. There are no associations in Western Canada any more. The National Council has a branch in Calgary. I think we represent probably three or four local or provincial associations.

MR. LAJOIE: And how many companies did you say?

MR. MAY: I would say that our membership represents perhaps 500 to 600 individual bakery companies.

MR. LAJOIE: Do you have in your Association, a number of bakery companies operating at only one place and having no affiliated companies or plants outside the city where they have their main office?

MR. MAY: Yes. Our membership is comprised of as complete a cross-section of the industry as it is possible to get, both with regard to location geographically and with regard to the type of bakers. Most of the large chain bakers support the Council and are members, and hundreds of smaller independent bakers also support the

Council.

MR. MORRISON: I might say that there are several in the City of Ottawa, independent plants, including my own company, Morrison-Lamothe Bakery Limited, who have their own bakery right here.

MR. LAJOIE: Could you tell us briefly what are the functions of the Council?

MR. MAY: Yes: to act primarily in the interests of the industry with respect to government negotiations. We find ourselves, in the baking industry, involved in a very large degree with the food and drug laws, that is to say, the federal food and drug laws, and so the Council functions with respect to all those things upon which it is proper for an industry to function on a co-operative basis.

MR. MORRISON: Tariffs.

MR. MAY: Tariffs and the whole gamut. We have no concern of any kind with prices, and never have had.

MR. LAJOIE: This is not a Combines Investigation; we are just enquiring what are the general functions of your Council. Have you got any general functions apart from dealings with the Government or Labour Relations?

MR. MAY: Yes, we got into the promotion of the enrichment of bread, the restoration of vitamins to bread. That was one of the major things we did last year. We are carrying on an industry public relations program.

MR. LAJOIE: Does that include advertising?

MR. MAY: Not directly. We have within our organization what we call the Bakery Foods Foundation

and its purpose is to work with people; it is a public relations body which deals with nutritionists, dietitians and so in, in an attempt to have bread recognized in its proper place in the Canadian dietary.

MR. HEAGLE: I believe that I could reduce the purposes of the National Council down to perhaps one sentence: the purpose of the National Council is to provide the Bakery Industry of Canada with aggressive and progressive leadership for all that is good for the industry and the nation.

MR. LAJOIE: Going to your brief at page 3 -- I do not know if Mr. May would care to answer this -- you say that during the last 15 year period there have been many new entrants into the baking business. Can you explain how you have had such a number? First of all, about what number of entrants would you say there was every year, approximately ?

MR. MAY: That comment was put in there because I was dealing with the net loss each year, but I wanted to indicate that that did not represent all the people who had gone out of business within any one year. Perhaps 50, 100 or 150 people come into the business, but they do not survive, they go out. That was my sole purpose. There are people coming into the business every day.

MR. LAJOIE: Can you explain why new people come into the business every day?

MR. MAY: They hope to make money. They hope to render a service which will warrant them making a profit.

MR. LAJOIE: I imagine that before going into an industry people have to invest a certain amount of capital, to have an office and to have a whole set-up, and they must inquire as to the conditions of the market. You seem to describe those conditions here as not too good.

MR. HEAGLE: Basically there are two reasons for anyone going into the bakery business: one is to obtain the personal satisfaction of being creative and being useful, and also with the hope of making a profit, and a proper return on his investment commensurate with his services. Those are the two main reasons why an individual comes into the bakery business.

MR. LAJOIE: Yes, but what I mean is that if conditions are so poor, if there is so little profit to be made out of a bakery business, how is it so many people go in every year?

MR. MAY: Well, every man who goes into business is an optimist. However, that is not the whole answer. Some go in after enquiry with respect to a pretty local situation. A man may decide that there is room for a good bakery in, let us say, Eastview. He may rent a store, get the equipment and start business, and he may well succeed in that local area and under local conditions. On the other hand, a man may say: "Well, flour costs so much and bread sells for two or three times that; look at the money the bakers are making. I am going into that business." He will learn very quickly that it is not as easy as all that.

MR. LAJOIE: On page 3 of your brief also you

point out that the bakery manufacturing plants or companies do have a tendency to become larger and larger every year to the detriment of smaller baking establishments. Would you feel that that is detrimental to the public interest generally?

MR. MAY: No. So long as it does not involve at that level unfair trade practices, loss-leader selling, or, broadly, price-cutting, or actions to drive the small man out of business, then I think it is the normal operation of the free enterprise system. If the operation of large bakeries is efficient to the point where small men are forced out, I do not see that you can do anything about it, and that tendency does exist within the industry because of mechanization.

MR. LAJOIE: So you do not mean by this statement on page 3 of your brief that you deplore or oppose such a trend?

MR. MAY: I might regret it but I think it is inevitable under our system.

MR. LAJOIE: I should like you to have a look at the definition of "loss-leader" which you actually give at page 12 of your brief. The term "loss-leader" for bread and other bakery products is regarded by you as indicating a price lower than the full recovery of all costs, both for baker and the merchant, plus a normal mark-up. Would you explain what a normal mark-up is, in your mind anyway?

MR. MAY: Supposing we try to answer that on the basis of the chain stores. Now there is no secret about what it requires to operate, in the way of mark-

up, a chain store. I do not know what is the exact figure obtained from the last study, but it is in the nature of 14 or 15 percent of mark-up. I think that if bread is sold at less than average normal mark-up there is some element of loss-leader creeping into its price.

MR. LAJOIE: Do you think that about 14 percent would be the normal mark-up?

MR. MAY: Yes, somewhere about that. There have been a lot of studies made, and it is regarded as somewhere in that neighbourhood.

THE CHAIRMAN: When you say that a chain store operates on a mark-up in the area of 14 or 15 percent, does your answer mean that if any product is sold below that average of 14 or 15 percent, then that would be loss-leadering?

MR. MAY: I would think that it starts to become suspect. There may be such things as rapid turnover, and as regards those factors, perhaps Mr. Heagle would like to comment upon those.

THE CHAIRMAN: What I am trying to get at is this: if you say that if any article is sold below the average it is loss-leadering, then there cannot be anything sold above the average, or else the average goes up and you do not get an average unless there are some higher and some lower; you get a uniform mark-up.

MR. HEAGLE: If you start out to obtain an average 15 percent mark-up, and you sell bread at only 5 percent over cost, which would be 10 percent less than the 15 percent of your average, you have to sell some other item at 25 percent mark-up in order to average your 15 percent.

It is beyond a question of a doubt that every business requires to establish a certain average mark-up in order to stay in business.

THE CHAIRMAN: Yes, but do you know of any business or any industry in which, while it aims at a certain mark-up, it also makes that a uniform mark-up for all its products? What I am getting at is this: It seems to me that necessarily there must be some variation in the mark-ups in any business, due to various conditions, and that they aim at getting perhaps a certain average mark-up because they think that is necessary in order to conduct their business properly?

MR. HEAGLE: There is in every business an exact method of fixing mark-up.

THE CHAIRMAN: But are there not in every business exceptions to what they regard as their regular or normal mark-up in that business?

MR. HEAGLE: May I put it in this way that the variation between what it costs any business -- let us take a super market -- to market, let us say a can of beans or loaf of bread, can be only fractional, certainly not more than 1 percent.

THE CHAIRMAN: It is not merely the cost of handling in the store. You have to bear in mind the rapidity of turnover and that sort of thing.

MR. HEAGLE: That is right, which would bring into consideration, for instance, interest on money, which would be one item. Then there is the turnover, whether it turns over 200 times a year or 20 times a year. One cost which would come in there would be the

interest on money. You can readily see that that would be very, very small, percentage-wise.

THE CHAIRMAN: There are other things also, such as the use of the premises.

MR. MORRISON: Bread is bulky; it takes up more counter space I would think than other similar items, and then there is loss. For instance, Mr. May mentioned 15 percent as the selling price. It is certainly not the net price because there are always stales. It is a perishable product.

THE CHAIRMAN: All I am really trying to get at is this: In any retail business, it has always seemed to me, at least, that there was some variation in the mark-up on different products in that business; that they are not entirely uniform, and the question would be whether a particular product necessarily should be marked at the average, or a little above the average, or a little below the average.

MR. HEAGLE: May I answer that in this way: every business would have certain classifications, and they would not be great in number. In other words, fruits would require a higher mark-up than a classification which was non-perishable; but the classifications are few in number and simple to define.

MR. LAJOIE: Mr. Heagle, have you had a look at the supplementary material submitted yesterday by the Director of Investigation and Research regarding the so-called price war in Montreal? On page 18, you will find a table showing the differences in mark-ups between a number of items in three chain stores in

Montreal. Those mark-ups, vary, as you will notice on page 18, from 4.7 percent to 20.6 percent, and you have a list there of about 10 or 15 different items which all have a different mark-up. Would you question the validity of those figures?

MR. HEAGLE: There are a number of factors involved, but might I answer it in this way: we protect the consumer with regulations which show on the outside of, say, a can of peas, the net weight, the quantity contained therein. Now, we protect the consumer in that way. I am certain in my own mind that a great deal of the variations in mark-ups are simply juggling of prices, not justified by invoice cost plus the overhead which comes into play from there on. If we are going to protect the consumer so that he will not be defrauded or deceived by the net weight or the grade, then should not the consumer also be protected for the same reasons, against the juggling of prices?

MR. LAJOIE: Is it your view -- I am just putting the question without expressing any opinion -- that there should be a fixed mark-up for items in, let us say, a chain store in accordance with size and bulk?

MR. HEAGLE: That is right, under specific classifications.

MR. LAJOIE: Do not you think that would hinder proper competition in a free trade country?

MR. HEAGLE: No. In dealing with the consumer I find that the consumer wants accurate honest information. People do not want to be misled into believing that they are being given a bargain when you sell them

an item on the one hand at a lower mark-up and take it away from them on the other hand with a higher mark-up. You can merchandise very successfully on quality and service, having it at the time the customer wants it in the place and in the condition that the customer wants it.

MR. LAJOIE: That is, of course, a very important point. You are entitled to your opinion and every one is, but I just wanted to have the point made clear whether you really thought that there should be a specific mark-up of about the same for all lines and items in a store, taking into account of course, the cost for every item.

MR. HEAGLE: And the classifications.

MR. LAJOIE: I do not know if this question should be answered by Mr. May, but on the top of page 4 of your brief, you mention that the usual selling price of a standard 24 ounce loaf of white bread in the chain groceterias today in Ontario and Quebec is 15 cents. Is it not true that the chain stores also sell 19 cent loaves?

MR. MAY: Some do; not all of them.

MR. LAJOIE: So this statement would have to be qualified, I imagine, because if I read it correctly, you say that the usual selling price is 15 cents.

MR. MORRISON: That is what is advertised weekly in the large page ads.

MR. LAJOIE: They advertise one type of bread which is 15 cents but does that mean that they sell only a 15 cent loaf? I am referring, of course, to

the standard 24 ounce loaf.

MR. MAY: Not exclusively. In some stores, yes, but in others they offer the 19 cent loaf, and I presume it is a relatively small percentage of their total sales.

MR. LAJOIE: Would you have figures on that?

MR. MAY: You have figures here on that.

MR. LAJOIE: Could you give the names of one or two or any number of chain stores who do not have the 19 cent loaf in the Province of Quebec or the Province of Ontario?

MR. MAY: I would prefer not to give names. You people know who they are.

MR. LAJOIE: Well, it must be publicly known so I do not think that there really could be any objection to naming them.

MR. MAY: To the best of my knowledge, the A & P only sell their own standard loaf of bread. I could be wrong, but to the best of my knowledge they do not sell any bread other than their own standard brand made by themselves.

THE CHAIRMAN: That is to say made by their own bakery?

MR. MAY: Yes. That is not so in the United States, but I believe it is so in Canada.

THE CHAIRMAN: You mean that the A & P stores do not sell a standard loaf of bread except for the standard loaf made in their own bakery?

MR. MAY: I do not think they sell a standard loaf of bread. I think they make only the one standard loaf of bread; they do not buy from outside bakers.

THE CHAIRMAN: For any of their bread?

MR. MAY: No. Now, just a minute, they do buy specialty loaves from outside bakers, but I am talking now about the standard 24 ounce loaf of bread.

MR. LAJOIE: You say that to your knowledge they do not sell them?

MR. MAY: That is right.

MR. LAJOIE: Do you know what is the difference in price between what we call private brand bread and baker's brand in other provinces than Quebec and Ontario?

MR. MAY: I am not quite sure but I believe the price, especially in Manitoba, is something in the nature of, on private brands, 2 for 25, baker's brands in stores, 2 for 27, and baker's brands delivered to the house 2 for 29. It is in that relative position.

MR. LAJOIE: Do you know of any province in Canada where there is no difference in price?

MR. MAY: No, not to my knowledge. I do not know of any provinces where there is as high a spread as four cents except in Ontario and Quebec. It is only one cent a loaf in Manitoba, and four cents in Ontario and Quebec.

MR. LAJOIE: Have you information about the other provinces?

MR. MAY: No, but I know it is not a four cent spread except in Ontario and Quebec.

MR. LAJOIE: In the provinces of which you spoke, Manitoba particularly, where the difference in price between private brand and the baker's brand is smaller than in Quebec and Ontario, do you think the decline in the

number of bakers is less than in Quebec and Ontario?

MR. MAY: I do not have any accurate figures with respect to the decline in bakeries by provinces over a long period of time.

MR. LAJOIE: Because, according to the figures which I have here and which were obtained from the Dominion Bureau of Statistics, the decline in Quebec from 1929 to 1951 has been only about 2 percent and in Ontario it has been 34 percent, whereas in Saskatchewan it actually was from 100 percent to 61 percent. Would you have any explanation for those differences in the decline in the number of bakeries in the several provinces as compared with Quebec and Ontario?

MR. MAY: Yes, I think there is a very obvious explanation, that in Quebec, outside of the metropolitan city of Montreal, people are still largely eating the loaf that their forefathers did, and they want to buy that loaf. The French loaf of bread is not a loaf which can be marketed in the way that we buy bread here, and the smaller bakery probably has a better chance to survive, because he is making a French loaf which has to be made and sold quickly, and also it is made to suit the desires of those people. I think that accounts for that.

MR. LAJOIE: Of course the metropolitan district of Montreal accounts for nearly half of the province.

MR. MAY: It also probably enables a small independent baker in Montreal to survive, because he is making the type of pastries which it is not possible for the large baker to make.

MR. LAJOIE: In Saskatchewan where there is apparently one type and one standard loaf, how would you explain the decline of 40 percent in the number of bakers?

MR. MAY: It is not much different in Ontario; it is 34 percent in Ontario.

MR. LAJOIE: As regards Ontario apparently you would explain the decline by this price war or loss-leadering as you call it, but apparently they would not have such a situation in Saskatchewan and yet still they had that decline in the number of bakers.

MR. MAY: Well, you are dealing with an area of very small population to start with, and it is hard to compare it. When you start applying statistics of 40 percent to 100 or 200 it is quite different from applying the same kind of statistics to 2,000 or 3,000 bakers; the percentage becomes less significant.

MR. LAJOIE: Now, in Manitoba where you have the large Winnipeg district, the decline was only 13 percent although they have a difference in price between the two types of bread.

MR. MAY: You must remember what I have said in the brief, that we do not attribute all the decline in bakeries to this particular chain store situation. We say that a substantial part of it stems from that, but we do not know exactly what proportion. However, obviously the decline in the number of bakeries is going on right across the country and some of the practices I am talking about are going on in all parts of the country in varying degrees. We think that the two are related,

that the use of bread as a loss-leader in all parts of Canada is contributing to the decline in the number of bakeries.

MR. LAJOIE: I am just trying to have you give exactly the relation, or as exactly as possible.

MR. MORRISON: Is not Mr. May trying to make the point too that due to this loss-leadering he is talking about, the large and perhaps more efficient plants are forced to sell at a lower price or a cut down price? Perhaps that is one reason.

MR. LAJOIE: You give only average or total figures in your brief, but looking at the figures divided by provinces, we find that the difference goes from 40 percent to only 2 percent decline, so that the question comes up: is there really any relation between the situation which you explain in your brief and the decline in the number of baking establishments?

MR. MAY: Well, we believe that there is. That is what we say in our brief; we believe that there is. We do not know the exact measurement and I do not think anybody can determine it, but we certainly believe that it is a factor in the declining number of bakeries.

MR. LAJOIE: Regarding the difference of four cents between the two brands of bread in Quebec and Ontario, could that be accounted for by the cost of delivery?

MR. MAY: Yes, but the people who use it are also involved in delivery. They cannot bake the bread in a chain store; it has to be delivered from some kind of a bakery to the store. I am willing to concede, and

I do in the brief, that there is a rightful price differential between the price in the chain store and the price from other types of distribution, but we do not think that it should be 20 percent.

MR. LAJOIE: Can you give an approximate figure as to the cost of delivery to the house?

MR. MAY: To the house?

MR. LAJOIE: Yes.

MR. MAY: Door to door?

MR. LAJOIE: By the baker himself.

MR. MAY: I do not know. I have not any exact figures but I suspect it is in the neighbourhood of 25 to 30 percent.

MR. LAJOIE: 30 percent out of a 19 cent loaf, so if we may take 6 cents out of 19 cents, that is 13 cents.

MR. MORRISON: No, that is too high. It is about 25 percent.

MR. MAY: All right, take 5 cents out of 19 and make it 14 cents. I do not have the exact figures but I will be glad to get them for you and supply them.

MR. LAJOIE: Have you got any figures as to the production cost of the bread which is being sold at 15 cents?

MR. MAY: No, but there have been previous government inquiries into this matter, and they invariably come up with the same answer that the cost of bread at the bakery platform of the chain store is almost identical with the cost of bread at the bakery platform of the independent bakery. They are using the same ingredients

in arriving at the same product and their costs are about the same.

MR. LAJOIE: You have looked at the supplementary report of the Director at page 16?

MR. MAY: Yes, I have a copy before me.

MR. LAJOIE: Apparently you have got the cost price of bread varying between \$0.1225 and \$0.1375, according to whether the bread is delivered to the individual stores or not; so that would be approximately the same cost as that of the baker's plant taking out, let us say, about six cents out of 19.

MR. MAY: No. The chain store still has to deliver it.

MR. LAJOIE: Those have to be delivered?

MR. MAY: Yes. Supposing the figure given by the baker here is correct, who says that it should be 25 percent, which is 5 cents or slightly less than 5 cents, then the answer to your question is that it takes approximately 5 cents to deliver from the bakery to the housewife, but it also costs something to take a loaf of bread from the bakery to the store.

MR. LAJOIE: How much.

MR. MAY: I do not know; perhaps 10 percent, perhaps 30 percent.

MR. LAJOIE: To deliver in bulk? To have all the loaves come from the bakery to the individual store?

MR. MAY: Take item number 3 here. It is recognizable and identifiable because this particular store make their own bread. They make bread in the same bakery in Ottawa. How much do you think it costs

to take a loaf of bread from Montreal to Ottawa?

MR. LAJOIE: Well, it is up to you to tell us.

MR. MAY: I can tell you this, that you cannot bake bread in Montreal and sell it in Ottawa in a retail store at 15 cents without involving the use of loss-leader selling. It is an impossibility.

MR. LAJOIE: Do you think the figures given at page 16 of the supplementary report may be inaccurate as to the buying cost of those stores?

MR. MAY: The one figure that I would question is No. 3. What is meant by "the cost"?

MR. LAJOIE: By "No. 3" do you mean "C"?

MR. MAY: It says below there: "Manufacturing cost per loaf", and it is shown as 12.7 cents per loaf. What does it mean by "cost"? If it is at the bakery platform, how much did it cost to take it from the bakery platform to the store?

MR. LAJOIE: Well, apparently brand "D" is being delivered at the store so that the difference between 12.7 cents and 13.75 cents would be the cost of delivery.

MR. MAY: Perhaps.

MR. LAJOIE: Just over 1 cent a loaf.

MR. MAY: Perhaps, yes, but it does not necessarily follow.

MR. LAJOIE: If you look at private brand "D", it is 13.75 cents cost delivered to the individual store.

MR. MAY: Yes.

MR. LAJOIE: That leaves 1 cent mark-up for the store, does it not? Would you call that a normal mark-up?

MR. HEAGLE: No. There has to be added to that the normal mark-up. That is the cost of getting it into the store premises.

MR. LAJOIE: Quite so, but it is being sold at 15 cents, so that there is a 1.25 cents mark-up.

MR. MAY: There is a cent and a quarter mark-up in that instance, but the answer to this problem is not as simple as analyzing that. What element of loss is involved in that 13.75 price. But assuming that there is not, add your normal 15 percent to 13.75 cents and you reach a selling price of 16 cents, not 15, but it is being sold at 15 cents.

MR. LAJOIE: May I ask you why it would be 15 percent, which would be the normal mark-up?

MR. MAY: Because that is the average for chain stores doing business. They cannot do business for less.

MR. LAJOIE: Why would they charge their average, when you know in practice they have a very wide scale of mark-up.

MR. MAY: Yes, but they still have to wind up with an average of 15 percent in order to stay in business.

MR. LAJOIE: You looked a moment ago at page 18 showing the variations in the mark-up. If you take one and a quarter cents profit on a 15 cent loaf, that comes to 8.33 percent, while the average for that store is 11.84.

MR. MAY: No. The average of those figures you have got down there is 11.84, but no chain store can do

business on the basis of 11 percent and stay in business. They need more than that. All the studies we have had on chain store merchandising indicate that.

MR. LAJOIE: Could you supply the Commission with definite figures on that?

MR. MAY: I am quite sure the members of the Commission here will have seen them. You do not question what I am saying, do you?

MR. LAJOIE: Well, the Commission has information supplied by the Director, and at the bottom of page 17 it says that chain store "D" has a normal mark-up of 11.84 percent, so that I think that until that information is contradicted, the Commission and every one concerned should accept it.

MR. MAY: Just to enlighten me, can you tell me on what that 11.84 is calculated? We have not got enough information here to draw conclusions.

MR. LAJOIE: Well, it is on all grocery items. Of course, the Director does not give the details.

MR. MAY: But on what part of the pricing level? Is it what he paid when he bought it in Toronto, what he paid after he got it to Montreal, or was it after he got it into his store? At what level is that 11.84 to be added? I do not know.

MR. WHITELEY: I think there is probably some confusion creeping in here. This particular line of questioning started off with the article delivered at the chain store, so that if we are dealing with that we must confine our measurement to that basis. Now the average of which you may be speaking is the average of

entire chain store operations which would involve whatever warehousing they do and whatever individual sales they make at each store; but in this particular case the example being taken is only the leader. There is no point in applying the overall chain store average, which may embrace a number of functions, to one function alone.

MR. MAY: Well, I do not know where we are going here.

MR. WHITELEY: If the figure you are using, this 15 percent, is an overall chain store operating basis, then it is not the figure that would be applicable to products delivered to the individual chain store.

MR. MAY: I do not know. I am not an authority on the accounting procedure of chain stores, and I am not able to comment upon these figures.

MR. WHITELEY: You might make clear what you are using as a 15 percent basis, whether it is the entire chain store operations involving all their functions, or merely the functions at the one end, the retail branch. To what is your 15 percent related?

MR. MAY: Well, as I understand these studies -- and I have not looked at them recently -- I think they are generally accepted, that it takes 14 to 15 percent mark-up to operate a chain store.

MR. WHITELEY: In its entire operations?

MR. MAY: Yes.

MR. WHITELEY: So long as we are clear as to what basis you are applying.

MR. MAY: This is part of its entire operations, on the bread, and it is a very important part too.

THE CHAIRMAN : What Mr. Whiteley is getting at is the distinction between a mark-up based upon the price which the chain store organization would pay in the first instance for the goods, and the retail selling price in the individual store. If it is 15 percent, that is one thing. What he is getting at is the difference between that and the 15 percent between the laid-down cost in the individual store and the selling price in that store, because the second example eliminates part of the cost of doing business by the chain store; it eliminates all that they have in connection with their warehousing and delivering from the warehouse to the individual store.

MR. MAY: I have not seen the figures, but they are pretty fractional, these costs, as to warehousing and so on.

MR. WHITELEY: Then that would run counter to your other estimates.

MR. MAY: I can tell you this: we are not in a position to prove to you what is the cost of bread by people who make it themselves, because we are merchants and somebody else has to find that out; but we are firmly convinced, and we think we support it well in this brief, that there is no justification for 20 percent differential between the price of bread in a chain store and all the other, grocery items, that they sell, when the average selling figure is a 5 percent lower one.

MR. LAJOIE: Well, I come back to this question which I will put in another way: do not you think that this can be almost entirely accounted for by the

delivery to the home cost?

MR. MAY: No, it certainly can not.

MR. LAJOIE: A moment ago you seemed to agree that between five and six cents out of the 19 cents loaf went in the delivery cost, so that leaves between 13 and 14 cents for the cost at the bakery.

MR. MAY: Yes.

MR. LAJOIE: My question would be this: is there a big difference in cost between that figure and the cost of the private brand loaf?

MR. MAY: At the bakery, they will be the same, or very similar, to within a fraction. The cost of a loaf of bread manufactured by the chain and by the baker will be very similar. I agree that it is from there on that we get into this question with respect to distribution and we arrive at differences. We agree, as the baker here has said, that it costs about 25 percent to deliver that loaf of bread to the door.

MR. LAJOIE: Now, you call loss-leadering the attitude of the chain stores. Would not that be only making a smaller profit on the merchandise?

MR. MAY: We say that loss-leadering of bread in chain stores represents a loss, no profit. We cannot prove it, but we think that competent auditors could prove it. This has all been gone over in previous enquiries, and, with all fairness, the people who manufacture their own bread have come before these enquiries and demonstrated that they were taking a loss on bread, but on the last study we saw, they did it by averaging such things as delivery and warehousing.

MR. LAJOIE: And you are saying that the chain stores -- this is not the bakers but the chain stores -- do take a loss on the bread?

MR. MAY: Yes, we believe that on all 15 cent bread sold in Ontario and Quebec today there is some element of loss in it.

MR. LAJOIE: For the store or for the retailer?

MR. MAY: For some of them.

MR. LAJOIE: If I bring in the information given by the Director on page 16 regarding the cost to the retailer, and also the conclusion of a chapter by the Royal Commission on prices in 1949, I wonder if -- and this is the question I am putting to you -- the real cause of the whole situation is not a long run change in the organization of the industry, having larger bakeries, bringing down the cost with mechanization, as you point out yourself in your brief, and so forth; and not really any loss on the part of the retailer or any other agent concerned with the production or distribution of the bread?

MR. MAY: I make the very definite statement that some part of the decline in the number of bakeries is to be attributed to what you are saying. As to the bakeries, the size of bakeries, the modernization and the mechanization, I freely admit that, but we also believe that an important factor contributing to the decline in the number of bakeries is the loss-leader element which is involved in the selling of bread.

MR. LAJOIE: Would your group be in a position to supply the Commission with figures as to the cost of

production of bread?

MR. MAY: Yes, with respect to bakeries, we can.

MR. LAJOIE: And the cost of a standard 24 ounce loaf at the moment it leaves the bakery platform?

MR. MAY: Yes. Before we do that, if this figure is accurate -- and I am quite sure it is -- it will vary only fractionally from that figure, just as it did in the report from which you are reading. The figures were given there six or seven years ago.

MR. LAJOIE: Referring particularly to page 39, to this concluding paragraph:

"The forms of competition which have developed amongst the large bakery companies and merchandising organizations have had serious effects upon independent bakeries who have not the resources to engage in the costly distributive methods of their larger rivals nor the volume of business which would enable them to compete with chain stores."

MR. MAY: I make exactly the same statement in this brief. I say the same thing. He does not say that is the only reason; he says it is one of them, and I say so in the brief quite frankly.

MR. LAJOIE: I am not speaking on behalf of the Commission, but the difficulty I have personally in getting to the same conclusion as you do, is that you do not have any specific figures as to the cost of production of the baker's brand and the cost of production of the private brand apart from the figures we have from the

Director himself.

MR. MAY: In all fairness, I was not asked to furnish information of that sort. You asked me to furnish this kind of information as to what happens when a loss-leader is used.

MR. LAJOIE: Of course, I am not blaming anyone for this type of brief; actually I find it is a very well presented one, but I am just pointing out that we do not have the figures regarding cost of production to compare with the chain stores, and I think it might be useful to the Commission to have such figures if you could make them available at any future date.

MR. MAY: If you so desire we can make the statement now, and I do not think the merchants who make their own bread will disagree substantially, that the price of bread at the door of the bakery will be about the same whether it is a merchant who bakes it or whether it is a chain store.

THE CHAIRMAN: Regardless of the size of the bakery?

MR. MAY: I am talking about comparably efficient operations. There is no doubt at all that the merchants are efficient bakers.

MR. FAVREAU: There is also one thing about which your members, or certain of them at least, have personal experience and upon which they would be able to inform us, and that is the difference in the cost of delivery as between delivery to a private home per loaf, and delivery to a store, because I understand that you deliver very few loaves to some stores and many loaves to other stores.

You might have some figures on that.

MR. MAY: That is extremely difficult information to get. You have bakers who are selling to stores only, you have bakers who are selling direct to the household, you have bakers who are doing both and you have local routes. After all, all these things are related to how much bread one man sells in a week, and you have all sorts of variations all over the place.

MR. FAVREAU: I am just putting that question, because I would be ready to agree that there would not be so much difference as there would appear to be at first sight between the cost of delivery to a store and the cost of delivery to a home. If you happen to have some figures, I think we would like to have them, because as I say, in some cases delivery to a store may cost just as much as delivery to a house, because to some small stores you might just deliver a few loaves.

MR. MORRISON: Without being specific, I would say that the small grocer has to have a profit, and when you add the difference between the discount you have to give a store for his profit and delivery to the housewife, it works out just about the same. In Ottawa, we give $2\frac{1}{2}$ cents to the grocer, that is to say our company does, as profit. You add that on, and you can deliver the loaf of bread to the house for the difference, which is just about the same. The other point is that on the report from which you are reading, if I remember correctly, the chain stores said that they required about 15 to 18 percent mark-up in order to do business. Our delivery cost is around 25 to 26 percent, so that there is a

difference of about 10 percent. Now Mr. May has argued all along that there was a difference, but his argument was that it should not be 20 percent. That is the point I want to make, that there is a difference of approximately 10 percent; but as regards 20 percent it is like the case where a man can live on \$50 a week and if he only gets \$25 then it is pretty tough.

THE CHAIRMAN: Would it mean from what you have said, that in your experience the difference between the price of the loaf might be $2\frac{1}{2}$ cents?

MR. MORRISON: About 2 cents; say 10 percent. On a 19 cent loaf it would be about 2 cents.

MR. WHITELEY: Have you any explanation why, if there is this severe price-cutting in regard to bread, it appears only in the one aspect, only in regard to the private brand? How is it that the brands of individual bakers do not vary in price -- I mean at the retail level?

MR. MORRISON: There is not enough profit. You have to have a cent variation and there is not a cent profit in a loaf of bread.

MR. WHITELEY: No, I am referring to the retail stores.

MR. MORRISON: I do not know.

MR. MAY: It is pretty well standard practice for them to cut their own private brands and leave the other brands alone.

MR. WHITELEY: There is no question of cutting; they are simply selling them on the same margin.

MR. MAY: I am thinking now of whether they sell

at 19 cents.

MR. WHITELEY: No; I am referring to the so-called prevailing or permanent form that you described.

MR. MORRISON: For instance, in the market down there, there is a grocer selling our bread at 15 cents for which he pays us $16\frac{1}{2}$ cents.

MR. WHITELEY: On the one hand you say the margin should be only 15 percent and actually the margin is 20.

MR. MORRISON: In which?

MR. WHITELEY: In these cases that are shown here.

MR. MORRISON: I do not follow you.

MR. WHITELEY: The difference here between the price at which they buy the bread and the price at which they sell it.

MR. MORRISON: The ordinary grocer?

MR. WHITELEY: All the merchandisers.

MR. MAY: Where do you get that, Mr. Whiteley, on page 16? Or where is that?

MR. WHITELEY: If they are selling bread at 19 cents, what price are they paying for that?

MR. MAY: Who is paying?

MR. WHITELEY: The merchandiser of baker's brand bread.

MR. MORRISON: We charge $16\frac{1}{2}$ cents, that is to say, our company in Ottawa here does, for a 24 ounce loaf, which we sell off the wagon at 19 cents. We have no control now over what the grocers can sell for.

MR. WHITELEY: That is practically 20 percent.

MR. MORRISON: No, 15 percent, is it not?

MR. WHITELEY: What about the chain stores?

What do they pay?

MR. MORRISON: I do not know. I do not sell to the chain stores. I can tell you though, that my net profit last year was less than 3 percent before income tax.

MR. WHITELEY: On capital?

MR. MORRISON: On turnover. If you cut that in two, you have a pretty small margin.

MR. WHITELEY: Are you prepared to give what it was on capital?

MR. MORRISON: I could not offhand. The statement is published.

MR. LAJOIE: Mr. May, you just mentioned that the production cost at your platform would not differ substantially from those mentioned here. Did I understand you correctly?

MR. MAY: There is only one figure mentioned there which represents a baker's cost.

MR. LAJOIE: That is Column A, is it not?

MR. MAY: Column C.

MR. LAJOIE: That is delivered.

MR. MAY: That is at page 16. Now, all the other costs except private brand C are baker's selling prices to a store. Private brand C is a store who bakes his own bread. That is the only known cost in that list of figures. That is the only declared cost as far as the baker knows.

MR. LAJOIE: I do not think you will have to

file any figures if you agree that this fairly represents the production cost.

MR. MAY: I would say that a large efficient baker will have a net cost, if that is the right cost for this company, and I do not question it, which would not be greatly different, a fraction of a cent.

MR. LAJOIE: For the sake of the record, you are referring to column C of Table V on page 16 of the Director's report.

MR. MAY: Yes.

MR. LAJOIE: Now I have only a few more short questions, I hope. At page 6 of your brief, you refer at the bottom to a new store in London. That must be publicly known. Would you mind mentioning the name of the store if you have it in mind?

MR. MAY: It was a Loblaw's store, a very fine new store which opened up and unfortunately was burned down a couple of months later and is being rebuilt today.

MR. LAJOIE: What was the name of it?

MR. MAY: Loblaw's.

MR. LAJOIE: At page 8 you say:

"A new super market in Brantford was
opened in November, 1953."

Do you know the name of that store?

MR. MAY: No, I do not. You can easily find out, though.

MR. LAJOIE: Would the Commissioners like to have the name of this store?

MR. MAY: In this particular case, the Director

of Investigation has all the information. I filed it with him at the time it happened. He has copies of the advertisements and everything that went on.

MR. LAJOIE: Regarding this Brantford matter?

MR. MAY: Yes.

THE CHAIRMAN: If the information is already in the hands of the Director, I would not think it would be necessary to file a separate report on it.

MR. LAJOIE: At the top of page 12, you say:

"In 1938 there were operating in Brantford and immediate area, 13 bakers. Today there are only 3 bakers who operate plants in the same area."

Would you remember the names of the three plants, or the particulars of the plants?

MR. MAY: I cannot give you the names of these bakers and where they were located, because I have not it with me, but I got it at the time I got this information.

MR. LAJOIE: I am asking about the total number of plants.

MR. MAY: There are only three operating in Brantford today. I am talking now about door to door delivery, not window bakers; I am talking about people who used to deliver bread to the homes.

MR. LAJOIE: One plant per baker?

MR. MAY: Yes.

MR. LAJOIE: Then on page 13, you refer to your Gruneau Investigation. Do you support and make yours the statement of Gruneau?

MR. MAY: As is set out in this statement which was filed yesterday, we gave Gruneau terms of reference to find out certain things. From that point on we had nothing more to do with it until he gave us the information, and then we passed the information on to the Director of Investigation and Research. The information that Gruneau gave us indicates the conclusions which I have drawn.

MR. LAJOIE: With regard to page 13, would you have the separate questions which were put by Gruneau in order to secure this information?

MR. MAY: They are listed on page 5 of the report which the Director tabled yesterday, the terms of reference that I gave Gruneau are there.

MR. LAJOIE: Yes, but would you have the questions which Gruneau put to the individual stores?

MR. MAY: Yes, they are included in the two copies of the report that I gave to the Director of Investigation and Research, from which he compiled his information.

MR. LAJOIE: You have not got the absolute figures to which the percentages refer in numbers 1, 2, and 3 paragraphs?

MR. MAY: As to the number of loaves of bread? No, I do not have the figures unless they are in the Gruneau report which you have got, then I do not have them. This is all that they furnished me with.

MR. LAJOIE: Now, on page 14, in paragraph (b) at the top ---

MR. FAVREAU: While you are on page 13, with

regard to the answer to the third question -- or rather not the answer, but the condensation of the answers -- is that:

"One-third of all independent grocers interviewed showed reduced bread sales."

MR. MAY: Yes.

MR. FAVREAU: "The average decline in bread sales for those who show a drop in sales was 27 percent."

Therefore, I conclude that two-thirds did not show reduced sales?

MR. MAY: Quite.

MR. FAVREAU: It might be that you have not these figures now, but it would be interesting to us if you could obtain them in supplementation of your brief. Would you be in a position to tell us if these stores forming this particular one-third whose sales dropped, were located in the vicinity of the chain outlet which did the actual price-cutting, because if they were it would show quite clearly that there is an actual connection.

MR. MAY: Well, I am not quite sure, but I think it says something in the report about that. Do you know if this makes any reference to that, that the stores which lost bread sales were adjacent to the chain stores?

MR. FAVREAU: Well, you can obtain that information from Messrs. Gruneau, maybe, and supplement the information later on by supplying it.

MR. MAY: Yes.

THE CHAIRMAN: Mr. May, I have a similar question

relating to the figures at the bottom of page 10 of your brief. You are referring there to five routes which were most seriously affected. Could you identify those routes as being near the super-markets?

MR. MAY: Yes.

THE CHAIRMAN: You could do that?

MR. MAY: Yes.

THE CHAIRMAN: That is what I would expect.

MR. MAY: Yes, with the exception of route No.5, which is a general wholesale route throughout the City. It reflects what happened to the bakers who were affected.

THE CHAIRMAN: But the others are routes in the vicinity of the super-markets?

MR. MAY: Yes. And on one route, I was talking to this particular baker last week, and he claims that by this time one-third of all his customers on one route is all that he has left.

THE CHAIRMAN: You mean that the others have been permanently lost?

MR. MAY: Yes, he lost two-thirds of that particular route.

MR. LAJOIE: On page 14, paragraph (b) you draw the conclusion -- or this Gruneau's conclusion which you endorse? --

"That the adverse results are likely to
continue long after the price-cutting
has ended."

and so forth?

MR. MAY: Yes.

MR. LAJOIE: That does not appear to coincide with the conclusion which comes out of the figures given by the Director at page 14 of his supplementary report. There is a summary there and a table which shows that the sales of baker's brand bread after the period of reduced prices, came back almost to the same level that they were before; from 39,000 it came back to 38,000; and in chain store A it went from 26,800 to 26,700 after the price-cutting period. Therefore those figures obtained from the stores concerned would appear to contradict the conclusion which you draw.

MR. MAY: No. The figure you have just quoted is a reduction from 39,300 to 38,300, which is $2\frac{1}{2}$ percent. If you keep hitting a baker every two or three weeks with a $2\frac{1}{2}$ percent loss, which is what happens when these things are repeated, he winds up without too much business. A $2\frac{1}{2}$ percent loss on a permanent basis is a serious thing. On the other hand, the same table shows that when it was all over the chain store had increased their sales on a permanent basis by 10 percent. Where did they get those increases from? They took them from the bakers or other stores. That Table IV does indicate that there was a very substantial measure of permanent damage done as a result of that price war to the baking business and the grocery business.

MR. LAJOIE: What about the results in total sales?

MR. MAY: We are not concerned with the total sales of all groceries before the Commission; I am concerned with the sale of bread.

MR. LAJOIE: Well if we look at the total sales there would appear to have been no diminution in sales at all.

MR. MAY: That is of all groceries, but with respect to the figures in regard to bread that are shown there, there is permanent damage done to the baking industry to the tune of the 10 percent increase in permanent sales which the chain store derives from the sale of bread, which they must have obtained from some other source of supply and to demonstrate a $2\frac{1}{2}$ percent permanent loss in the sale of baker's brand bread. But all these figures simply indicate the nature of things. There might be 50 factors involved, such as, for instance, when people get paid, and they could all be in here. Every study of this kind will disclose that the baker has lost ground every time a thing like this happens.

MR. LAJOIE: Now on page 16 you draw another set of conclusions, if I may call it that. You say:

"The objects of the use of a loss-leader undoubtedly include....(b) to induce sales of other goods on which a profit is made," ..

and so on, while the total sales indicated in Table IV on page 13 of the director's supplementary report indicates that the total sales are not any significantly higher after the price-cutting period than they were before, and you have at page 14 the comments on those figures.

MR. MAY: Nevertheless they are higher. They are not lower; they are higher.

MR. LAJOIE: Do you think that the difference is really significant? The chain store which started the price-cutting had an increase of \$4,000 out of \$1½ million or over.

MR. MAY: As I say, there may be other factors that enter into this thing. Reference is made already in this report to that fact that at one time when this free bread business was going on, or this low price bread, it was the time of the week of the payroll and so on. This is a short time study.

MR. LAJOIE: We do not have any other information from you or any other stores.

MR. MAY: Yes, you have more information than is in here. I gave you some more examples, and if you want more I will be glad to get them. I show you examples of permanent damage to the baking industry.

MR. MORRISON: Speaking as a practical baker, if there was a big price war going on in the chain stores, it would affect your output very drastically. It puts you in a false position. Bread is a very important part of the diet.

MR. LAJOIE: You mean a false position for that week or for that period?

MR. MORRISON: Yes.

MR. HEAGLE: You get that repeatedly all along, and it is serious. Just while you are on that point, I would like to draw your attention to page 3 in this same report.

MR. FAVREAU: In the Director's report?

MR. HEAGLE: The supplementary report. No doubt

you will be studying that particular page again, but I would like to draw your attention to the top of page 4 where, after talking about the advertising which appeared, this super-market -- I presume it is a super-market -- makes this statement:

"The tremendous impact of this advertising was bound to have a damaging effect on our business if not properly met. The damage to be feared was not only to bread sales but to our merchandising reputation by reason of the general impression given to the public. The probable impression was that because bread, which is a staple item, was so much cheaper at our competitor's stores, that his other lines of merchandise would be priced correspondingly low."

Now you can see how seriously this super-market who handles tremendous numbers of items took this act of substantially reducing the price of bread to where it was definitely a loss-leader. Just imagine the much greater impact that that has upon an industry which is specialized, like the baking industry. This seems to me to verify exactly what we have been claiming this morning, that the practice of setting sale prices in super-markets is not based on their cost but is based on competitive conditions and things which they work out themselves, but not prices set on the basis of cost. The second thing that that letter brings out is that the impact on consumer confidence is very damaging and

certainly it is very damaging to the reputation of the bakery industry.

MR. LAJOIE: Is it your opinion that the consumer is really being misled by such price-cutting?

MR. HEAGLE: Very much so.

MR. LAJOIE: Do you think that when a loaf of bread is being sold at 10 cents instead of 15 cents or 19 cents that the consumer, that is, the ordinary consumer, believes that they were robbed when they were paying 19 cents?

MR. MORRISON: They certainly do.

MR. HEAGLE: They certainly do, and they tell us so.

MR. MORRISON: It is very difficult to justify it. In other words, it is mean competition.

MR. LAJOIE: Now at page 19 are you suggesting that the Government should institute a new inquiry entirely into the problem which you raise in the third paragraph on page 17, an enquiry to determine whether or not and to what extent the public interest in this country is in jeopardy as a result of the operation by merchants of their own manufactories such as baking?

MR. MAY: Yes, that is certainly what we are suggesting; we feel that that question we have been going over has never been properly dealt with before boards of inquiry such as this, and that only the partial story of the cost has ever been disclosed.

MR. LAJOIE: May I draw the conclusion that the real problem is there and not in loss-leadering?

MR. MAY: But that has to do with loss-leadering.

How are you going to isolate this particular recommendation from loss-leadering? We are talking about loss-leadering and nothing else.

MR. LAJOIE: Could it not be that a store, let us say, can operate its own manufacturing plant at less cost without making any profit on that possibly, but just supplying its own store?

MR. MAY: It is not possible for a chain store to make bread any cheaper than an efficient baker.

MR. LAJOIE: But it is possible for him to require a smaller profit?

MR. MAY: Not necessarily. He will have to have what profit he requires to operate his business.

MR. LAJOIE: Yes, but possibly the operating costs would be lower if it is all thrown up in one single business and one system of accountancy.

MR. MAY: If you do that, we shall find out. Institute the inquiry and let us find out what the costs are and whether he is that much more efficient than the says he is.

THE CHAIRMAN: Gentlemen, I do not like to interrupt but we have a little problem on our hands. It is quite clear we will not finish dealing with this presentation this morning, as it is now about 12.15, and we also have a gentleman with us who desires to present his brief and who has to catch a plane to Toronto this afternoon. He informs us that he needs about 15 minutes. I wonder, therefore, if we could interrupt this presentation now and hear this other gentleman's presentation for about 15 minutes, and

then we will have the luncheon adjournment and come back and deal with the balance of the consideration of this brief. Will that be satisfactory, gentlemen?

MR. HEAGLE: Yes, Mr. Chairman. At what hour would you like us to return?

THE CHAIRMAN: You are leaving now?

MR. HEAGLE: Yes.

THE CHAIRMAN: Then we had better make it 2.30, to be quite safe, I think.

--- The hearing of the presentation of the National Council of the Baking Industry was then adjourned until 2.30 P.M.

RETAIL TOBACCO ASSOCIATION OF THE PROVINCE OF QUEBECREPRESENTED BY:

Mr. H. J. Gorfinkel.

THE CHAIRMAN: Perhaps you would give us your full name and whom you are representing?

MR. GORFINKEL: The full name is H.J.Gorfinkel, Honorary President of the Retail Tobacco Association of the Province of Quebec, speaking on behalf of 27,000 retail tobacco outlets in the Province of Quebec and approximately 90,000 retailers across Canada involving close to half a million people.

THE CHAIRMAN: Your position is with the Quebec region?

MR. GORFINKEL: Yes, with the Quebec end, but we have been approached from all parts of Canada to state our position and keep the question of our problems before you until such time as you can establish your findings upon a definition of a cut price loss-leader.

MR. WHITELEY: What is the actual membership of your organization?

MR. GORFINKEL: Anywhere from 150 to 200, when they attend meetings, but most of them being very small retailers who have to do their own servicing and look after their own establishments, they never have time to attend a meeting and so it is left to a figure of membership in the neighbourhood of 150 who have their interests at heart to come here and acquaint you with the facts.

MR. WHITELEY: Is this membership confined to

any particular district?

MR. GORFINKEL: To the Province of Quebec, mostly Montreal, Lachine, Outremont, Dorval, St. John, Quebec City and the Laurentian district. This Association was one of the original associations established some 20 years ago. We had a deplorable situation where some of these little insert cards were placed inside packets of cigarettes and were used as premiums and as a result a small group of retailers, about which you will hear at a later date, and also in the brief, took over the public relations on behalf of these retailers and protected them on orderly merchandising. Our organization during those years laid dormant until the abolition of price maintenance when the evil and unethical practice of loss-leaders became predominant. That is the problem which I want to put before you, for a dual purpose: firstly, as you are covering Toronto previous to having our brief, it might give you some of the information about which I heard this gentleman here making inquiries, which will help considerably in solving our problem, possibly along with numerous other problems; also there is the emergency which has presented itself due to conditions where a small retailer today must either meet his bills or go out of business. He cannot stand by at present although appreciating the fact that this Commission, he knows definitely, will find a solution to what is a loss-leader or what is, as the gentleman said before, a cheater leader seller. That is a very good term. He cannot see how he can maintain his position, pay his bills, carry on the

business and so on. But, pending that decision, he has not the resources of these big organizations, or the capital to withstand this severe shock which is facing him today. The shock consists simply of this, that at the end of the day when he adds up his cash he has not got enough to go ahead and pay for his own existence, leave alone, his overhead. Under the conditions that were existing at one time a small merchant who was selling tobacco, which ranged anywhere from 45 to 74 percent of his gross business according to the Director's findings, earned from 11.81 to 15 percent. I am not going to dwell upon figures; it is more or less to give you an outline.

MR. FAVREAU: These figures will be supplemented later on?

MR. GORFINKEL: Yes. They are in the Director's book right now, so you can check upon them. To be exact he earns 11.81 percent today on every dollar's worth of cigarettes he sells, providing there is no unethical practice of loss-leadering. To make ourselves clear, so that we should not be misunderstood by the consuming public of Canada whom this retailer serves to the extent of 85 percent of tobacco products which are sold in Canada, and so that consumers should not feel that we are looking for anything that we are not justified in asking, in 1939 when cigarettes were 20 cents a package, the little retailer made a profit of 3.6 cents on a package. That is not in the book. The book is 100 percent correct in everything it says, but it is subject to 25 percent being contradicted, because the information

that is given as far as the 25 percent is concerned is just the information which the individual sees fit to give you. He gives you the thing from his point of view. He is not going to say anything detrimental to himself, but as regards the other findings, the Director took the necessary means to find out and they are accurate.

In 1954, at the present time, or previous to the last budget which took place in the early part of 1953, his profit had been reduced at that time equivalent to 15.3 percent gross profit on his sales. Now, in 1954 he is earning 11.81 percent providing there is no loss-leader selling. He is earning the equivalent of 3.90 cents on a package of cigarettes, which has increased in price from 20 cents to 33 cents, which is approximately $66\frac{2}{3}$ percent.

The reason I am bringing these particular figures out is so that the consuming public will know exactly the position of the small men, and the consumers leagues in Canada will know we are not looking for anything out of the ordinary.

The question is where is the retailer heading for until we get the findings of this Committee. This Committee will report within a few months to the Minister of Justice, and the Minister of Justice in return will report to the House, and then they will decide what can be done. But in the meantime the small retailer is facing extermination. He cannot pay his bills; he has no grub for his family, and no milk and so on. He is losing his reputation, he is losing his faith and

his confidence. He has not got any unemployment insurance to fall back on because he does not come into that category; he cannot go into another business because his finances are exhausted. He cannot go ahead and transfer to another industry, in the manner of getting a job as is usually suggested when any one industry becomes dormant, that another type of industry will absorb him. The reason is simply this: the majority of these small retailers were possibly civil servants, possibly veterans, possibly office workers, possibly labourers who unfortunately have had a heart attack or something like that. It is the small men who make up the little retail tobacco merchants who operate a store, and work from the wee hours of the morning to wee hours of the night giving the public service. It is made up of a man who possibly was a civil servant or a veteran from the first war or the second war, a truck driver or a labourer, who has had some ailment, it might be heart failure, a heart attack, bursitis, arthritis, or some other itis, and he has to get a means of livelihood. He may have been given an annuity or a pension from his old job, and he has invested this particular little annuity in a corner tobacco shop.

MR. FAVREAU: Now that you have got to that point, may I interrupt you for a moment. With regard to these small retailers of whom you are now talking, are they specialist retailers in merchandising tobacco, cigarettes and cigars and all that, or are they also people who have a grocery store or candy store?

MR. GORFINKEL: Candy store and a tobacco shop, and a magazine and knick-knack shop.

MR. FAVREAU: When you talk about your 90,000 members for whom you are speaking now, these are not all specialized tobacconists?

MR. GORFINKEL: They can be or they may be. They represent 85 percent of tobacco products sold in the Dominion of Canada.

MR. FAVREAU: I know, but what I am interested in are the types of store.

MR. GORFINKEL: There is no such thing as a tobacco shop. There is no such thing and there never was.

MR. FAVREAU: So they include any one retailing tobacco?

MR. GORFINKEL: Yes, in the proportion which stands in that book, anywhere from 45 to 69 percent of the volume is in tobacco sales.

MR. FAVREAU: Of their total volume?

MR. GORFINKEL: Yes, that is right. These small merchants are the ones who carry on this type of business, and if they happen to go bankrupt, which they all will not do but a major part of them might until we get the findings of this Commission, they have no recourse to Unemployment Insurance because they do not come into that category. They are left helpless because nobody will employ them. It is not the usual case of an employee who transfers from one industry to another. They may be invalids or possibly they are not capable of working. They include people of anywhere from 45 to possibly 65 or

70 years of age. If they reach that age they are fortunate to have 40 dollars a month and they have no other recourse but losing their pride, their self-confidence, and getting nothing more or less but sympathy and charity. They certainly do not want sympathy and they certainly do not want charity. They want the ways and means of earning an honest, legitimate livelihood and to be able to feed their families.

There are seven factors who control the tobacco business in Canada; first of all there is the farmer, second there is the manufacturer, third there is the jobber, fourth there is the jobber retailer, fifth the chain grocery store and sixth the small merchant who is responsible for 85 percent of tobacco sales to the consuming public and the biggest partner of all is the Government itself, who, from the selling price of every package of cigarettes, takes $66\frac{2}{3}$ percent right off the top before ever it leaves the factory. Before the cigarettes leave the factory, the farmer gets $4\frac{1}{2}$ cents on a package at the rate of 90 cents a pound, two and a half pounds to a thousand cigarettes. Then there is the other approximately 4 cents or thereabouts which the manufacturer gets for manufacturing, labour, advertising, packing, shipping, freight and so on. That brings you up, allowing 18 cents to the Government, 9 cents for the manufacturing and the farmer to 27 cents, and between the wholesale jobber who sells to the small merchant and the small merchant there is a difference of 6 cents left. That leaves a difference of 6 cents between that and the retail price, and this 6 cents is what

everybody works on to make a livelihood. At the present time, these people are selling cigarettes at one-tenth of a cent per package loss. The retailer pays 29.10 cents and he is selling at 29 cents in the Province of Quebec. It is slightly better in the City of Ottawa. Half a block away, as I drove up here, I stopped and went in to one store and another store, and I found that they are selling at 30 cents. Their margin is slightly better. They make 9/10ths of one cent per package at cut prices, or approximately about $3\frac{1}{2}$ percent.

The argument came up previously, or the discussion, as to what it cost to do business. A small retailer is perfectly content with 15 percent. He was not arguing about the 11.81 percent which he is making today because there are some additional allied lines, but we definitely know that he cannot stay in business at 11.81 percent. He must have other merchandise to sell. It may be that he makes it either from selling postcards, pads of paper, a toy bazaar, school supplies, birthday cards, and all sorts of cards.

We also know that the chain stores are selling this merchandise today as a cut price loss-leader, or we claim as a cut price loss-leader, on a gross profit of 7.7 percent, which means that cigarettes are sustaining approximately a 7.3 percent loss or close thereto because we say it costs them 15 percent to remain in business. I might give you this information if you really want it and if they cannot furnish it to you. I can give you a statement in regard to one of the outstanding food chains who do a business of approximately

a hundred million dollars worth of merchandise. This is of minor importance but I would say it shows that they do business at a cost for merchandise in 1952, in case you might want to refer to it this afternoon, of 102 million dollars and some few thousand, which costs them \$14,396,000 to do business on. That is what it entailed in expenses on cost of goods before they earned their profit -- I am not talking about selling prices which profits are established upon. Selling cigarettes at 7.3 percent shows a loss of 7.7 percent. This will be in the brief, but seeing that it came up I am just bringing it out.

Pending the findings of this Board and the recommendations there must be an emergency situation declared in ~~wome~~ way or other to give these small retailers a chance.

It seems quite stylish nowadays to quote scholars of wisdom. As recently as Monday the Premier of Canada quoted the Pope in 1948. Well, we will go back further on behalf of the small man and we will quote a Pope of centuries back; I believe it might be Pope Alexander, or at any rate one of the eminent scholars of the day who said that a just and equitable profit must be given for a commodity or a service. In those days they did not have price maintenance, and they did not go ahead and have price restrictions, but they saw the necessity of giving the peasant, the farmer, the merchant or whoever the person might be, a price so that he could get a just return in order that he might go ahead and not have to hang his head in shame.



I suggest that we can take a leaf out of the scholars of wisdom of those days, because the Prime Minister is still taking leaves from the scholars individuals, and the Pope has taken it from the days gone by when they have turned around and given us an inkling of what is facing us nationally today. All we ask is a just and equitable price to go ahead, on behalf of these small dealers, and maintain our position. We deplore the fact that this situation of cut prices has come about, but we do know that now this fact has been brought up, we are going to face it. You cannot go ahead and establish price maintenance, which we believe possibly is the solution to lower prices for the buying public or else the Government would not have enacted it, without establishing definitely what a loss-leader is.

Under the Combines legislation, minutes of proceedings and evidence No.7 of Tuesday, November 7th, 1951, an extract from the Joint Trade And Labour Congress of Canada's submission:

"One possibility your Committee should
keep in mind"

May I file this in order to save you time?

THE CHAIRMAN: I think perhaps it would assist.

MR. GORFINKEL: It goes on to say -- I will just read one sentence --

"One possibility your Committee should
keep in mind, and, in the opinion of
this Congress, make every effort to guard
against, in any amendments that may be
suggested, is a swing of distributive

"business away from the smaller outlets and a concentration of such trade in a few very large establishments."

That is exactly what has happened. They do not have to make any money on selling cigarettes, in the majority of chains. That business represented in the early 1940's approximately 3.10 percent of their business, and it will not show a noticeable increase in percentage on their gross turnover because it is only used as an enticement to get the customer in so that he buys additional merchandise. Today the individual only goes to the small shop to buy a package of cigarettes, occasionally. What happens is that his wife has gone into the tobacco business now. She says to him: "How many packages of cigarettes will you want this week? How much do you pay for them -- 33 cents? Well, suppose I buy you your cigarettes". She would not do that before because they come out of her house money, but as long as he is buying them, she does not mind. She goes down to the grocery store and buys them and puts a package in his pocket. The only time he buys a packet today is when he runs short and needs them. At the end of the week he has consumed, let us say ten packages, and she has made 30 cents on the deal. She buys chocolate bars for the kiddies and she stops that out of her budget. That small storekeeper in the past had the opportunity of having the man come in and buy a package of cigarettes, buy a comic, which has now been abolished, or buy a magazine or a chocolate bar, but today he has lost that business.

Gentlemen, we have got to go ahead and take precautionary measures pending the findings of this Board to recommend to the powers that be what is a just and equitable price, which, as we know from the days of the Roman Church, was what it was said should be practiced, and it should be practiced today. Pending the findings of this Committee, some system of fair and orderly merchandising must be maintained, and nobody then can lose anything. The consumer will not lose anything. He is not losing anything right now other than being enticed to buy other types of merchandise. Every conceivable type of individual in the City of Montreal is in the cigarette business, although they do not belong to it; there is the barber shop who sells them in order to get the fellow to come in to take his semi-monthly or monthly haircut, and there is the shoeshine parlour, the watch repairing establishment, the tavern, the restaurant and so on; they all display loss-leaders.

If you want to know how it affects the small person, there is a little tobacco store right here on Wellington Street, and I believe from the information I have got that they are suffering very much due to the unethical price-cutting which is going on, due to one chain store opening and having a cut price, a drug store following, a restaurant following, and so on. It is deplorable, and we must say to the powers that be that orderly merchandising must be maintained so that these retailers can stay in business and pay their bills until we get the findings of this committee, and in order that they shall not lose their faith, their backbone and

their courage to go on . It is the small man for whom we are appealing today; it is the small man of yesterday who is the big man of today, and it is the small man of today who is going to be the big man of tomorrow, and we must protect him. Possibly it is not the invalid who is going into the tobacco business today who is the man who can be expected to be the big man of tomorrow, but he must give his offspring the benefit of the institutions in a country so vast in resources as ours, to give them the bread and the milk and so on in order that they can be the big men of tomorrow. This is not an appeal to sympathy from the point of view that these men want sympathy, but they have to be given consideration right here and now -- not by this Committee, I am not putting the onus on you, but recommendations should be made to the powers that be to see that those men are given a shot in the arm. If I may put it in this way, when a man is very sick and the doctor takes some X-rays and sends him to the specialist, he gives him temporary relief until he sees the X-ray results, and that is what the small man asks today.

I think I have given you a pretty clear picture of our position.

MR. FAVREAU: In your brief, I presume that you want to show us what the picture is in each area. Take the City of Montreal, for instance, which might be representative at least in one case. Do I take it within each of these areas you will tell us what are the number of outlets which you claim are retail tobacco outlets, and among these outlets what is the number of outlets that

essentially deal with tobacco -- 65 or 66 percent, as you have said -- because you understand that this has quite an important bearing upon the question because if we have 90,000 dealers who retail tobacco to the extent of 2 percent or 3 percent, any price reduction might not have too much bearing.

MR. GORFINKEL: It is all the chain stores and the volume it is 3 percent or thereabouts, but bearing in mind that it is done on a business of 100 million dollars odd, it is an important factor. For the small man, just like in the bakery business, percentages vary considerably, but it is the small minority which counts. In this particular case this is all being done gratis by a few of the larger members who have taken the onus on their own shoulders and the reason why they have done so is not so much because the shoe pinches them right now, but they know that what is happening to the small man today is going to happen to them tomorrow. They have undertaken this along with certified auditors who have given their help in trying to get the information such as you requested in your letter, asking us to give this, that and the other thing. Practically speaking, that information is next to impossible to obtain from the small man, as to how much he sold of this and how much of that, but we do definitely know where the business has gone and that tobacco products are distributed to the extent of 85 percent through the small man. We can only give you right now the figures which we have got, and British Columbia has asked us to go ahead and give our figures,

because they are affected in the same way. The Director has pretty accurate figures of what has taken place in British Columbia as to the wholesalers and so on.

The figures as to these chains will vary. It does not follow necessarily that the terrific increase in the sale of cigarettes is going to show, because that is going to be drowned out by the terrific increase in the sales of the other things which he sells. We know that if he sells \$300 worth of cigarettes and increases that to \$600 worth, and he sells groceries to the extent of \$600 and he increases that to \$1,200, it is not going to show a big increase in the dollar worth of his cigarettes, but he has an increase in groceries which we know he cannot afford to sell at less than 15 percent margin of profit. In one season he might get vegetables at higher prices, but we know that he needs 15 percent. We do not have to go looking too far because we can very easily get the public chartered accountant's statements, and they will show you that and they are pretty accurate.

If there is anything you want to ask me, go ahead and ask me. We are going to try to give you as precise a brief as possible showing exactly what loss-leaders mean and what they are. We are fully convinced on one point and that is that you cannot buy an article at a dollar and sell it at \$1.01 and not be a loss-leader. That is obvious to a school child. We know that before some of the members of the Government and the MacQuarrie Committee felt there was a problem there but they did not know how to handle it. Today you cannot go ahead

and have price maintenance abolished and not have something like this coming along.

As regards what constitutes a loss-leader, you might go ahead and say: well at least 5 percent. That is ridiculous; you might just as well not say anything. 5 percent above cost should be the basis of what a loss-leader is when we see that it takes 15 percent in order to do business in a chain store. Now, I say this here, that we must go ahead, and if it is at all possible, have this Commission recommend to the powers that be, whether it be the Minister of Justice or whoever it might be that orderly merchandising be established in some way, shape or form, so as not to step on the toes of the fair trade restrictions which have been abolished, pending the findings of this Committee. There is nobody more qualified than this Committee to go ahead and make the recommendations after listening to me on behalf of these retailers. I know that I cannot go ahead and sit down as an individual and argue the pros and cons, but I think this Committee can, and I think the small retailers across Canada are entitled to that consideration today from this Committee in making its recommendations to the powers that be.

THE CHAIRMAN: Thank you. I expect that we shall need a good deal more factual data before we can think of making any positive recommendation to the Minister, because the Minister simply could not be expected to act unless we give him chapter and verse to show why something must be done, and we shall need the figures which probably you will be giving us in your brief

before we can consider doing anything of that nature. Also there will be other organizations of tobaccoists, retailers and wholesalers, who wish to appear before us both in Montreal and Toronto at the hearings which we will be holding in those cities in the next two weeks, and we hope to get a good deal more information that will be helpful.

MR. GORFINKEL: In the Province of Quebec, wholesalers' sales are dropping at the rate of \$2,000 a week, and our losses, in the first three months of this year, by retailers going bankrupt were as large in those first three months of this year as they had been for the whole year in 1953. In that deplorable situation there must be, without exact findings as you say, some type of appeal that could be made for orderly merchandising pending your findings, even until we get the report. I am not saying go ahead and say you can do just what you did before; we are not looking for that, we are looking for an appeal to the Minister of Justice that pending the findings of your Committee the small dealers and everybody else concerned should maintain orderly merchandising, even if it has to go to the extent of going back to the old contracts between buyer and seller providing it is submitted first to the Director of Prices and so on to see that it is not abusing the privilege of being able to buy merchandise at the lowest fair, just price. The fairest just price is not a cut price or an unethical loss-leader or a cheater loss-leader as our friend suggested, and it is a good term because in a sense it is cheating. I know you can grind

hamburger and if you put a little bit of bread crumbs in it you can get a price that is higher than if you use all meat, and nobody knows the difference.

THE CHAIRMAN: Very well then, we will adjourn now until 2.30.

--- Whereupon the hearing adjourned at 12.50 P.M. until 2.30.

Upon resuming at 2.30 P.M.

THE NATIONAL COUNCIL OF THE BAKING INDUSTRY

(Continued)

THE CHAIRMAN: Mr. Lajoie, have you anything to add?

MR. LAJOIE: I have a few more questions. I would be glad to have some clarification, if I may, of page 4 of your brief. At the bottom of the Table you give of Independent Grocer's prices and Chain Groceterias' prices, these apply, I understand, to the same items and the same brand of items, that is to say, Chase & Sanborn Coffee on the one side and the same on the other side. Am I right?

MR. MAY: They are your figures, not mine. They are taken from the report of the Director of Investigation and Research, and they are on pages 273 and 275 of the Director's report.

MR. LAJOIE: That is right, so I take the liberty of drawing your attention to the third paragraph on page 271 where it sets out the prices charged by a group of independent grocers for the same items, so they are the same items on a brand basis. Now, if we go to page 5 of your brief it would appear that when you compare the independent grocers and direct bakers' sale prices of bread with the chain groceterias' prices for bread, you are comparing two different brands of bread, while if you had compared the prices for the same brand there would not be any difference in price.

MR. MAY: You have to remember this, that bread is bread, and that brand means probably less in the

merchandising of bread than it does in regard to any other commodity. A loaf of standard white bread is an article of food and is not substantially dissimilar whether it bears the brand of a chain store or whether it bears the brand of a baker, so you are substantially comparing two identical products. The chain stores do not manufacture on their own account all these other items we are talking about, and they do not merchandise them under special brands, generally speaking.

MR. LAJOIE: I just wanted to make that clear because actually the figures on page 4 of your brief compare the same brands while on page 5 apparently they are different brands.

MR. MAY: But they are the same product in essence, the same essential product.

MR. LAJOIE: If you compare, let us say, one brand of coffee with another brand of coffee, it is the same product but yet it is a different brand and there are different prices even in the same store.

MR. MAY: With respect to coffee, not greatly different.

MR. LAJOIE: You mean the quality?

MR. MAY: There is very little difference in the quality of coffee, on that particular product.

THE CHAIRMAN: Or price.

MR. MAY: And not much in price.

THE CHAIRMAN: I know one or two brands seem to be a good deal higher than others.

MR. MAY: I think you are right but the point should be made that brands are relatively less important

with regard to bread than they are with regard to any other products. There is no question at all that the store branded bread is essentially a good loaf of bread just as is the branded baker's bread.

MR. LAJOIE: But how is it that the chain stores will sell both brands of bread and people will pay 4 cents more for the branded type?

MR. MAY: It could be related to many factors but it is probably related to the magic of advertising. Bakers are advertising their brands and the consumers accept the advertising and they go in and demand that brand because they prefer it, and pay more money for it as compared with the chain stores' brand.

MR. LAJOIE: Did I understand you correctly this morning to say that bread by different bakers, though not entirely of the same type, is made with the same ingredients and so forth?

MR. MAY: There are probably no two loaves sold that are identical with regard to formula. They vary with regard to formula.

THE CHAIRMAN: But your contention is, as I understand it, that as between the private brands which are used by some chains and the baker's brands, there is really no substantial difference in quality?

MR. MAY: No.

THE CHAIRMAN: And that people might be expected to buy one as much as to buy the other insofar as quality is concerned?

MR. MAY: That is, in effect, largely true. It could well be that some specially branded bread in a

chain store is slightly lower or somewhat lower in quality, but generally speaking a loaf of bread is a loaf of bread, and there could not be anything more than a fractional difference in the cost of the two.

MR. HEAGLE: There is however, one point, we probably should make clear and that is that each loaf of bread will have its own distinctive flavour, and that is frequently the determining factor as to why a person would select as between one loaf of bread in preference to another.

MR. MAY: Answering your question broadly and in the sense in which you are asking it, there is not really any substantial difference between the specially branded bread and the private baker's brand in the 24-ounce loaf.

MR. LAJOIE: Now you say at the bottom of page 19 and the top of page 20:

"Two of the largest bakers in Canada today are manufacturing and distributing on the basis of our best estimates, each approximately twenty-three million dollars worth of bread".

You mention the profits and compare them on the basis of the volume of sales. Would you have, by any chance, the capital stock or the investments in those companies?

MR. MAY: They are both published statements and I can get the information for you, but I hope you will allow me to say this that business generally regards the true and proper measurement of profits to be in terms of sales. It has to be related in some way to capital

invested, but a business man will, by and large, insist upon recognizing as the true measure of profit, the dollar sales value of the goods that he sells, and with good reason. If a man invests so much money in a plant and he runs that plant three or four hours a day, he does not deserve to have the measure of profit return which another man might get who invests the same amount of money in the plant and runs that plant 23 or 24 hours a day. A business man will always insist, all the economists in the country notwithstanding, that the true measure of profit is in terms of sales. Everything in business is dependent upon the point of sale. The whole purpose of business is to make a sale, and the measurement of profit should be at the sales level. However, I can get you the capital figures if you want them.

MR. LAJOIE: Yes, I think the Commission would like to have them.

MR. MAY: As an aside, I may say that both these companies invested more money in new plant in the two years in question than they derived in profits.

THE CHAIRMAN: Mr. May, I am somewhat interested in your argument that the whole attention of business is directed towards the point of sale, and that it is the profit as a percentage of sales, with which they are concerned, rather than the profit on invested capital.

Many of the business organizations which exist in this country have share capital in which people are expected to invest. Do not you think that it is the return on the investment which they make in which they are interested

rather than the profit on a particular item of sale?

MR. MAY: There is of course some basis of relationship between invested capital and profit margin.

THE CHAIRMAN: From the point of view of the person investing capital I would think that is important.

MR. MAY: Of course, you might buy bonds in which case you do not participate in the profit on sales.

THE CHAIRMAN: That is true as regards bonds as distinct from common stocks, but wherever you have an investment of risked capital, it is the return on that capital which the people investing are looking for. If they think they can make, 6, 7 or 8 percent a year and get that by way of dividend, they will be satisfied, and they will not be so much concerned, it seems to me as to the exact rate of profit on each sale that is made so long as there are enough sales made at that profit to produce them their 6, 7 or 8 percent.

MR. MORRISON: But for all practical purposes, I think it is the accepted custom in this country to base your operations and judge all your selling prices, to set your selling prices and everything, on the basis of profit per sale.

MR. MAY: You are quite right that from an investor's standpoint you must think in terms of the return on the money you invest and that is often determined by the stock market value of the stock, not related at all to capital invested. Even market values are determined by earnings rather than capital involved.

THE CHAIRMAN: Yes, that is what I mean. The return on your capital will determine the market value

of your stock and the likelihood of your getting any additional capital if you want it.

MR. MAY: Yes. The economists insist upon having the return upon capital, but business will always think in terms of the profit on sales. It is inevitable for a man managing a business to think in that way. You have two sides to the question.

THE CHAIRMAN: I quite appreciate that with respect to the gross profit on any article sold, but I would have thought in the end you would want to get a reasonable return on the invested capital, and your shareholders will not like it if you do not.

MR. MAY: The profit in terms of the return on sales in a well-managed business at a high level of operations would be substantially higher than what you might judge to be a reasonable return for the amount of capital invested.

THE CHAIRMAN: It might also work out in this way, speaking of the percentage of profit there is on the sale of your articles, that if you have a product that turns over very rapidly, that turns over 20, or 30 or 50 times a year -- and I think in the case of bread it is a lot more frequently than that -- you do not need as big a percentage on each sale in order to have a pretty good return on your capital at the end of the year, as you do where your product only turns over once, twice or three times a year, because you make the profit a number of times in the course of the year.

MR. MAY: That is true with respect to the sale of the product, but it is not quite so true with respect

to the manufacturer. Supposing a business is manufacturing something that only sells once or twice, television sets, we will say. You and I, as consumers, will only buy once, twice or maybe three times in our lifetime.

THE CHAIRMAN: Or not at all.

MR. MAY: Or not at all; I have not bought one. The man who is making that product is making 200, or 300 a day; he has to have, or he wants, a return of profit on sales of 200 a day. The man who is baking bread, even though it is eaten every day, and you will buy 200 or 300 loaves of bread a year, has to get his return on the number he is making today. The man who is making television sets, he has to have it every day. He is just not selling them to the same people, but he is still making them every day, the same as the baker is baking bread.

THE CHAIRMAN: He needs to make as much money every day but he does not need to make so many articles.

MR. MORRISON: Do not you think that my statement that my net profits this year were less than 3 percent bears out what we are trying to argue?

THE CHAIRMAN: I think you said that was on sales?

MR. MORRISON: Yes. If you get any lower than that you disappear.

THE CHAIRMAN: I could imagine a case in which a profit of 3 percent on sales was mighty little on your invested capital, but in other circumstances it might be a pretty good return.

MR. MORRISON: It might be, yes, but it is pretty

close operating -- too close for comfort.

MR. LAJOIE: Mr. May, could you give the Commission any supporting evidence for the last paragraph at the bottom of page 21 where you state:

"Loss-leader pricing of bread is subsidized by the higher price charged customers who do not have access to the loss-leader areas."

MR. MAY: Well, I do not know what you mean by supporting evidence, but I think that is a statement which is accepted as being true by the majority of bakers in this country. I can give you just this little bit of supporting evidence from one of the largest bakers on the West Coast. It came unsolicited after I had furnished him with a copy of this brief for his comments. He said this:

"I have not much hope that we will get any relief at all from any source other than from a fair trade Board",

and then he says this:

"I have always contended that if chain stores would sell bread at a reasonable profit the price of bread produced by the larger bakers would be reduced by at least one cent per loaf."

I am not giving you that as proof of my statement; I am submitting it only as a proof that that is what bakers believe, that a man who is buying bread from other outlets is, to some extent being subsidized by the loss-leader element that is in the chain store price.

MR. LAJOIE: Would you let the Commission know from whom that letter is?

MR. MAY: I would prefer not to, but if you insist I will tell you. He is one of the largest bakers in Western Canada.

THE CHAIRMAN: I do not think we would insist on that.

MR. MAY: It is a fairly personal letter written to me.

THE CHAIRMAN: If it is a personal and private letter I do not think we would ask you to disclose it.

MR. MAY: Let me give you other evidence of it. We have here a local baker, what do you feel about it, Mr. Morrison?

MR. MORRISON : Well, I will go on record right now as saying that I will reduce the price of bread tomorrow if the chain stores sell it at the right price.

MR. WHITELEY: For what reason?

MR. MORRISON: Because I could increase my volume.

MR. WHITELEY: You are not supplying a chain store now?

MR. MORRISON: No.

MR. WHITELEY: Some bakers are.

MR. MORRISON: Perhaps they are.

MR. WHITELEY: What would happen to them? If your volume increased would theirs go down?

MR. MORRISON: I do not know. I have always understood that they are not making any profit. They all tell me they are not making any profit on the bread

they sell to the chain stores.

MR. WHITELEY: You say your volume would go up?

MR. MORRISON: The independent stores would go up.

MR. WHITELEY: You would expect that your volume would increase?

MR. MORRISON: Yes, through the independent stores and through people who let us supply them for four days of the week and then when they are shopping on Friday they take home four or five loaves.

MR. WHITELEY: Whose volume would decline?

MR. MORRISON: The chain stores.

THE CHAIRMAN: And the bakers who supply the chain stores?

MR. MORRISON: Yes.

MR. MAY: Not entirely. The baker who is supplying the chain stores still has a substantial volume of business outside the chain stores. He might suffer some loss with respect to his supplies to chain stores, but he might recover a great deal more by the increase in his sales at higher prices to these other outlets.

THE CHAIRMAN: Yes, but somebody would have to lose unless the total consumption went up a good deal.

MR. MAY: If the chain store price goes up, you can argue that the consumer loses, but there would be a much more fair distribution of things within the industry.

MR. MORRISON: Would it not be a more fair distribution to the public also?

MR. WHITELEY: How much would your volume have to increase in order to reduce the price one cent?

MR. MORRISON: I would not like to make a statement offhand.

MR. WHITELEY: But you made the statement that if your volume increased you could reduce the price one cent.

MR. MORRISON: I would take a chance if I could get 10 percent.

MR. WHITELEY: If you increased your volume by 10 percent, you would decrease the price one cent?

MR. MORRISON: Yes. Therefore I feel that this cheap bread is a misnomer; that it may benefit certain people in the heavily populated districts, but where we have to cover a whole area like this -- we cover the whole Ottawa valley from Brockville and Cornwall to Pembroke and we give service to everybody in this valley, there would be no benefit.

MR. WHITELEY: What differences in price do you have.

MR. MORRISON: None.

MR. WHITELEY: Then you are not subsidizing anybody?

MR. MORRISON: No. We have the same price all over.

MR. WHITELEY: So that the people in the metropolitan area in your case are subsidizing the people in the outlying areas?

MR. MORRISON: They might be, but it is the same all over because we are competing with local bakers

at the same prices.

MR. WHITELEY: So that your price is actually cut down in the outlying areas rather than put up?

MR. MAY: No, that is not right. The point I am trying to make is this; Mr. Morrison's price to his customer is higher than it would be if this loss-leader business was not going on.

MR. WHITELEY: But his customers have access to the loss-leader area?

MR. MAY: Yes.

MR. WHITELEY: I thought you were saying that these are people who do not have access to the loss-leader area?

MR. MAY: He is supplying a large area of the Ottawa valley which does not have access.

MR. WHITELEY: But everybody is paying the same price for his bread?

MR. MAY: Yes, and he says a higher price than it would be, if it were not for them.

MR. WHITELEY: Providing he got more volume from somebody.

MR. MAY: It is based on other factors, of course, but what I would like to say is that that statement about which you asked me is the confirmed belief of, so far as I am concerned, the entire baking industry, that there is subsidization in the form of higher prices going on all the time because of the loss-leader element that there is in there.

THE CHAIRMAN: But Mr. Lajoie's question was merely directed to finding the basis for that belief.

You say it is a general belief held throughout the industry, but what we would like to get if we can, is the facts upon which that belief is based.

MR. MAY: Let me put it to you in this way. It is a very difficult thing to explain. Nothing is black and nothing is white; we are into shades of meaning. To the extent that the man we mentioned before who sells to the chain stores, the baker who sells to the chain stores, is not getting a proper recovery of his price, to keep that chain store activity he is having to gather in from other sources of distribution, a higher level of income than otherwise would be necessary. The point I am trying to make is that because of the loss-leader element in the chain store level of prices, all other prices of bread for all other sorts of outlets is somewhat higher than otherwise it would be.

MR. WHITELEY: How does that bear on the question of the extent of the difference in Ontario and Quebec? You say it is four cents, which is the largest, presumably?

MR. MAY: So far as I know it is.

MR. WHITELEY: So that whatever the element is it would be of greater significance there; in other sections of Canada you find it is considerably less.

MR. MAY: Yes.

MR. WHITELEY: Going down as low, I think, as one cent.

MR. MAY: Yes.

MR. WHITELEY: You also say that you think there

is a justifiable difference between the price of bread in stores and the price of bread delivered to the house?

MR. MAY: Yes.

MR. WHITELEY: If the difference is down to one cent, which you say is the lowest fraction you can deal with in bread prices, then the situation in those areas must have come to what you regard as the proper level?

MR. MAY: No, I have not sufficient knowledge to tell you what I believe to be the ideal level. In the area in which it is one cent it is on a loaf which sells for $12\frac{1}{2}$ and not 19 cents.

MR. WHITELEY: It is a different loaf, I admit.

MR. MAY: I do not know what the proper level is, and the bakers are not capable of finding out what the proper level is.

MR. WHITELEY: And yet the instance you cited was from the area where the difference is as small as reasonably it could be.

MR. MAY: In what respect?

MR. WHITELEY: If you have a difference between the store and the household, then this is about the minimum you would expect.

MR. MAY: It cannot be any lower than one cent, I agree.

THE CHAIRMAN: I think Mr. Morrison's experience, he indicated, was about 2 cents.

MR. MORRISON: Yes.

THE CHAIRMAN: In this area it might be the difference in the cost of delivery as between delivering

to the house and delivering to the store. Now in Manitoba where you said there was one cent differential, the loaf is smaller?

MR. MAY: Yes.

THE CHAIRMAN: But the one cent in Manitoba would be still less than the 2 cents which Mr. Morrison suggested might be all right here, so you seem to be reduced to the position that Manitoba cannot be very far wrong.

MR. MAY: I think Mr. Morrison thinks that the chain store price is too low. He named two cents. I do not know what it should be; I just know it should not be the 20 percent difference there is today.

MR. MORRISON: I arrived at that from the enquiry. What do you call the enquiry that Mr. Martin headed?

MR. WHITELEY: The Prices Committee of the House of Commons.

MR. MORRISON: Yes. I remember that the chain stores said at that time that they required an average mark-up of 15 to 18 percent. I think that is in the record there. Now, it costs our firm approximately 12 percent to ship bread in these great big transports to Pembroke and Cornwall and all around, so I presume it must cost them about the same to ship from Montreal here. Our cost is about 25 percent for delivery, and if it costs them 15 to 18 percent for distribution, there should be somewhere about 10 percent difference on their own figures. I have no idea what their costs are.

MR. MAY: If you will allow me, I can give you

two sets of figures. You were quoting today from the conclusions of this inquiry which we refer to as the Martin inquiry, but it is the **Special** Committee on prices.

MR. WHITELEY: It was divided into two parts; there was first of all the Parliamentary Committee and then subsequently a Royal Commission.

MR. MAY: When the bakers appeared before that Committee I suppose they argued somewhat along the lines we are talking about today, and they were asked for some substantiation for this statement that there was something wrong with the chain store business at that time. We hired a firm of chartered accountants, one of the biggest in Canada, Price, Waterhouse & Company. Now, this is on the record, not from the conclusions, but in the evidence at this hearing, and they went to work and took the bakery platform price declared by the chain store in question, which was 8.7 cents then, which is the comparable figure to the 12.7 cents that you have in this report, and the accountants determined how much it cost to take that bread to certain points in Canada. I mentioned this morning a shipment of bread baked in Montreal and sold in Ottawa, which is roughly 125 miles. The closest comparable figure I can give you from this report is bread baked in Toronto and sold in London, which is a distance of about 120 miles. The price was 8.7 cents at the bakery, and when it got to London, with no other added cost except transportation, if it was by express, it was 10.195, and if it was by transport it was 9.88 cents. Bread at that time, baked by

this company was selling for 10 cents a loaf and in some instances for 15. These are the laid down costs in London without any mark-up, and this is proof positive that at that time this bread was being sold in London, at a loss, just as I say it is being sold in Ottawa today at a loss.

MR. WHITELEY: Yes, but of course your brief is not confined to any one region. It is said to be a condition existing right across the country.

MR. MAY: Yes. I am dealing largely with the factual data from Ontario and Quebec. I say that a similar situation occurs in varying degree, in different parts of Canada but in Ontario and Quebec it is far worse than anywhere else in Canada.

MR. WHITELEY: Apparently the only solution would be that there should be no difference between the store and the house.

MR. MAY: I make it very clear in my brief that I do not suggest that. I say there has to be a difference between chain store prices and other types of outlets.

MR. WHITELEY: Then it seems to me you would have to differentiate between the various different conditions which prevail across Canada.

MR. MAY: But I suggest to you that it all adds up to loss-leader selling in respect to bread on a permanent basis.

THE CHAIRMAN: It would seem to mean from your statement about the differential in some other parts of the country that there may not be what you call loss-leader selling in those parts of the country?

MR. MAY: I am not so sure of my facts with respect to other parts of the country.

THE CHAIRMAN: If there is only 1 cent, or $1\frac{1}{2}$ cents or 2 cents difference?

MR. MAY: Yes. I am not in a position to argue that that represents loss-leader selling.

THE CHAIRMAN: I thought that must be the conclusion. If Mr. Morrison suggests his experience is 2 cents difference here, then if there is only 1 cent to $1\frac{1}{2}$ cents difference in the price in some parts of the country, then in those parts of the country the conclusion would seem to be that there is not loss-leadering.

MR. ANGLIN: I would like to mention at this point that it is a privilege for me to sit in and lend support to our National Council on this, but I think the last interpretation is the correct one. If our larger stores were taking their margin of profit on bread, as they are on other articles, this situation would not arise at all. In our four Maritime provinces there is no loss-leadering. We have two extensive chains there, and we are selling over 8,000 independent stores and chain stores every morning. We have different weights and naturally there are different prices in the different areas, but we have one price, whatever is the prevailing price in that area, regardless of whether it is an independent or a chain store. I think there are two people in this boat. Our Chairman mentioned five, the consumer, the labourer, the supplier, the Government, and so on. The Government is vitally concerned because

unless this industry is prosperous, our country is not prosperous. As regards our baking industry, with the employees we have in the industry, our figures, I regret to say, are not any better than Mr. Morrison's on the left here; if we make one-fifth of a cent per unit, we think it is marvelous. I have not the figures on capital that Mr. Whiteley requested, but I have the percentages, and 2.24 percent on sales is a wonderful year. I am here to support the National Council for fear that this will spread to our Maritime provinces in the East, exactly as it prevails in Central Canada today. It is vital not only to us in the industry, but to these independents and our Consumers' Leagues are terribly strong; these old ladies come into our plants and they have gone all through our plants, and they have confidence in the product we are providing. They know our labour conditions, they know our prices, and there is no longer any criticism whatsoever, and that is the rock bottom figure with us in the East. How is there any justification for any chain store, if they are taking their proper margin as they do on other commodities, using bread as a leader to sell below cost? We have got to have a foundation underneath; it may be only cedar posts, but unless there is a policeman to prevent someone sawing six inches out of each of these posts and letting the whole thing collapse, the whole five interested in this are going to come right down below. I think that is all we are interested in, to ask for a Trade Board who will inquire into it with enough teeth or weight behind them so that they can

walk into any situation as it may prevail and have it all brought out into the open air. I hope that that legislation and board comes about, and I am speaking not only on behalf of the baking industry but also the independent grocers all over the country. We are in a depressed way down there; our textile factories are closed and our coal mines are not doing too well. I have made it a point to find out just what the labour situation is, and they do not want anything to happen to the baking industry or to any other industry. All we are asking is fair prices and fair methods, and I think that judging from the conditions which prevail up here, if we can get the facts before a proper Board where we can substantiate our arguments, these conditions will not spread to other parts of the country.

THE CHAIRMAN: That is what we are trying to do, to obtain all the facts that we can. There is one question which occurred to me while you were speaking. You indicated that in the Maritimes you have not the particular trouble that they have here with loss-leadering, but that your financial picture was no better than it is here?

MR. ANGLIN: That is right.

THE CHAIRMAN: In other words, your financial difficulties are not due to loss-leadering?

MR. ANGLIN: Economic conditions; our public have not the pennies to spend.

THE CHAIRMAN: It is due to other economic circumstances rather than to loss-leadering in the Maritimes?

MR. ANGLIN: Yes.

THE CHAIRMAN: But your position is relatively the same or nearly the same as regards earning power?

MR. ANGLIN: Regardless of whether it is in the East or in the West it is all a case of volume, and the slightest fraction of margin down in your volume makes the difference between black and white. If somebody comes along and by sufficient unethical practices they can cut that foundation overnight, right from underneath you, that is the position which we are trying to forestall, so far as I am concerned, and so far as the East Coast is concerned, because it is in the interests of all our public.

MR. LAJOIE: The only point that I would like you to explain a little more fully, Mr. May, or other members of your delegation, is your final recommendation. Exactly what type of Board do you propose? Is it to be only a meeting place or would it have some teeth as one of your delegation members has mentioned?

MR. ANGLIN: It has got to have the teeth.

MR. MAY: Now you are getting me into your realm. Up to now I have had a slight advantage in talking about the baking business, but now we are getting back into the realm of law and you have the advantage. We stress the usefulness, where people have complaints against one another in business, of being able to come to a meeting place. We recognize that the Combines law is necessary to make sure that that is not done by themselves, and yet we think that many of the things we are talking about today could be resolved at a conference table under the competent supervision of Government officials. Let me

give you a specific example and a recent one, this Montreal situation which we have been discussing back and forth and which was reported by the Director yesterday. That came to my attention as likely to happen ten days before it did happen, from sources that I believed to be reliable. I went to the Director and said: "Here is a cut price situation coming up in Montreal. We think it is not good for anybody and certainly it is not good for the bakeries". That is why I went in the first place. That is what I do, I try to look after the interests of the bakeries. I do not think it was any good for anybody concerned. Certainly it was not any good for the independent grocers, and in the final event I do not think it is any good for the public. He said: "Why do you come to me?" I said: "I cannot go and approach these people who will start this, and sit down to discuss a situation involving prices unless I can get some kind of unofficial sanction to do so", and he said, as I knew he would: "Of course not; the Combines law is operative". But if we had had what we are asking for here, and if he had had the power to summon the person in question to a conference, that Montreal situation would never have developed, in my opinion. It would have come up for discussion about ten days before it was about to happen; I would have pleaded the case for the bakers, he would have pleaded his case, and I do not think he had a good case -- and the whole thing would have been disposed of.

MR. LAJOIE: If the initiators of price-cutting,

if you call it so, had thought after that conference, that that was good business, for them to do so, to cut the prices, nobody could have prevented them.

MR. MAY: He thought so, but I kind of think if I had had a chance to talk to him with a Government official sitting there present, he would have found it very difficult to defend the course of action he was going to take. The best evidence I can give you is the three other people who got caught up in it. Everyone of them started off by saying: "We did not initiate this situation; we had to follow"; in other words, they did not like it themselves. That would be the value of such a meeting, but I quite agree that it has to be done under competent Government supervision.

MR. LAJOIE: Do you have any example of any other such Board without compelling powers?

MR. MAY: We had the one I referred to. I do not know why it was done away with.

MR. LAJOIE: The other one you referred to had some compelling powers?

MR. MAY: They were very limited, but I have a copy of those powers here. It had practically no powers to compel its decisions, but what it found out was that when you get men of different points of view sitting around the table, there is not too much trouble in resolving the problem.

MR. LAJOIE: Would it be any different from the Commission you are talking about?

MR. MAY: It has to be different now obviously; it cannot be the same. The Government, for good

reason, though I do not know what the reasons were, abolished that Commission. It must have done something that did not suit the Government, and the Government could only deal with it by abolishing it, having regard to the public interest. It has to be different. I think it should be under the Department of Justice. I would like to see the powers of the Director of Investigation and Research enlarged so that instead of dealing with general inquiries, he can deal with specific instances and deal with them promptly and provide the conference, provide the meeting. As a lawyer, you may say to me that that is not the way you write law, but I say that is the way to solve problems.

MR. LAJOIE: Experience would have to show that because you do not seem to have any instances or examples.

THE CHAIRMAN: I wonder, Mr. May, if you have in mind something that would correspond to the conciliation boards in labour matters where there is no compelling power, but you get people together around a table and try to come to a decision.

MR. MAY: There is a marked difference between the settlement of labour problems and dealing with the public and prices.

THE CHAIRMAN: But you do it by negotiation without compulsory or penal powers.

MR. MAY: I think you have to have power in the end, but I think the important thing is to provide the meeting place. I am quite convinced that 90 percent of what we are talking about would not exist if there was

a place somewhere that the Government would provide under their supervision, a conference, where a man who has a complaint with respect to unfair trade practices can sit down with the man about whom he is complaining. Business men will not defend unfair trade practices before such a body.

MR. MORRISON: And if we cannot justify our complaint, we certainly do not ask for any favours.

MR. MAY: I want to go on the record now as saying that if this 4 cent spread can be justified, we are completely out of court and it has to prevail. If the 4 cent spread can be justified, we have no argument.

MR. MORRISON: Take this situation right here in Ottawa. According to the press there are five supermarkets going to open up here in the next six months. Now there are four fairly large independent, privately owned bakeries here: Walker's, Balharrie's, Galla's and our own. There is no other outlet, no other means of support, only our own plants. These fellows can get into this business of giving away free bread or get into a row between themselves and they could carry on in Ottawa indefinitely, and what recourse have we? We have no protection. In the old horse and buggy days you did not need traffic officers, but if you had not got traffic officers with enforcement behind them, today, where would we be? We would be in chaos. I maintain today that with the number of large chain bakeries, the large chain stores, operating all over the country, it is absolutely essential for the protection of the local

plants and industries that we have some recourse for unjust and unfair trade practices. That is all we are asking. If any outsider can come in and undersell me legitimately, why, God bless them, if I am not efficient to stand up and do it. All I want is an umpire who will give the decisions.

THE CHAIRMAN: Mr. Morrison, you mean, I presume with regard to these four or five new super-markets that the bread they will sell will not be bought from the bakers?

MR. MORRISON: I am not concerned where they buy it so long as they do not give away free bread, that sort of stuff.

THE CHAIRMAN: If each one of the four of them bought from one of your four bakeries, if you all got a share of it, you would still be selling the same amount as you are now. It is only if they bring the bread in from somewhere else that you are hurt?

MR. MORRISON: Yes, but it would upset your market, I mean.

THE CHAIRMAN: Arising out of that, there is a question which I had intended to ask, and it has to do with the Brantford situation where that super-market opened up and gave away free bread for some time. Was that bread brought into Brantford from some outside bakery? Was it from a different source?

MR. MAY: With respect to one of the two stores concerned it would be bread manufactured in Toronto. In fact I believe with respect to both of them it would be bread manufactured in Toronto.

THE CHAIRMAN: Then you show the net ultimate permanent loss. The figure is a fairly small percentage -- I have forgotten what it is just now; 2.76 percent was the permanent apparent loss for one baker, I think, and what was the other one?

MR. MAY: We only give the other one with respect to the five routes most affected.

THE CHAIRMAN: The 2.76 percent is apparently what you regard as the permanent loss to the baker. Would you regard that as something resulting from the giving away of the bread or the existence of a new fairly large outlet selling bread?

MR. MAY: No, I think you have to recognize that some part of that loss develops from the opening of the new store.

THE CHAIRMAN: They would be bound to take some of the business or they would not be there at all.

MR. MAY: That is right.

THE CHAIRMAN: And if it was a fairly large outlet, do you think it might take as much as 2.76 percent?

MR. MAY: No. Every instance of free bread will show a loss to the bakery industry and the independent grocer. It will vary but I would say not less than half of that was as a result of the free bread, the permanent loss.

THE CHAIRMAN: In that particular instance, the net loss --

MR. MAY: -- might be $1\frac{1}{2}$ percent.

THE CHAIRMAN: That is not perhaps very

significant, as regards the net permanent loss, compared with the free bread.

MR. MAY: No, but the opening of the new store is to be attributed to the fact that they are going to deal in loss-leader bread anyway, according to our argument, automatically. The $1\frac{1}{2}$ percent may not sound very much but when the new store opens they lose 1 to 2 percent. Then they give away free bread and they lose 1 to 2 percent. Then a few weeks later, they cut the price to 10 cents and they lose 1 to 2 percent. It is the multiplicity of these things which finally drives a man out of business.

THE CHAIRMAN: I am afraid I interrupted you, Mr. Lajoie.

MR. LAJOIE: I believe this is the end of my questions, with this short discussion upon that proposal and that is all I have to ask.

MR. MAY: If it is a free discussion we are into now can we discuss this question of the Trade Board, the possibility of such a thing further, because we are so convinced that something of the sort has to be done.

THE CHAIRMAN: That is one of the things in which we are particularly interested. We are concerned about finding out to what extent loss-leaders are being employed and in what sections of industry they are being used, what is the extent of the detriment that flows from it, and what remedies are possible and available to meet the situation, if we come to the conclusion that something should be introduced. This is a proposal for a remedy and I think the more we can learn

of just what that remedy is and how it may operate, the better.

MR. WICKWIRE: What compelling powers would you give to the Board?

MR. MAY: You are out of my class there. I have a hard time living under laws, without writing them.

MR. MORRISON: What about the railway commission? You do not find any variation in rates from here to Montreal. They must be regulated. They must have power to set them.

MR. WICKWIRE: You are suggesting a comparison with a conciliation board on labour relations. It is true they do get around a conference table in the first instance, but both parties know if they cannot resolve their difficulties, there are some compelling powers to enforce them. Now, on behalf of the Commission, I would like to know what are your suggestions for the compelling powers of such a board as you suggest?

MR. MAY: I do not feel confident to suggest that there has to be some power. You will notice that this is very loose wording. This is a recommendation, and that is all we can describe it as. The basic principle is that the Government should provide a forum, a conference table. We can meet around that table and resolve our own problems, but that conference table should be provided under Government supervision, and if you want powers to enforce whatever this Board may decide to be the proper thing, such as the elimination of unfair trade practices, well, it takes a better man than me to say what those powers should be. There you are getting

into the realm of the legal matters and I cannot deal with that. However, we think that the conference table is most important and we also said that it should be under Government supervision.

MR. FAVREAU: One thing you say is that you do not ask the whole control for yourself or the industry, but you agree to submitting it if necessary to some external authority?

MR. MAY: Yes, and the Board has to have the power to require the production of facts. It has to have those powers to begin with. I am not so sure that I am too concerned as to what powers you have to have to enforce your decisions. I have a great deal of confidence in the fairness of men in business when they are brought to the point where they must see the other man's point of view.

THE CHAIRMAN: Then you think that in a very large percentage of cases once they have threshed it out and heard the difficulties which would be faced by the people on the other side, a decision would be reached to prevent the consequences of what is looked upon as bad conduct; but in the limited number of cases where that might not happen, you would not, at any rate at this time, like to say what powers of enforcement there might be, but there would need to be some powers of enforcement in those comparatively few cases. Is that right?

MR. MAY: Perhaps there would have to be. I think in 98 percent of any specific situations we are discussing you would not need any powers of enforcement

at all. If a man had to sit down and defend what someone else said was an unfair trade practice, he could either prove before this Board that it was simply normal aggressive competition or else he would agree that there was an element of unfairness in it, and when you get him to agree to that in 98 percent of the cases he would agree not to do it.

MR. MORRISON: But what about that 2 percent? I think you will have to have something in the way of teeth in the act, otherwise it will be like the old League of Nations, it is just a good idea. However, it is not the 98 percent we are worried about, it is the 2 percent who might cause a lot of trouble. I do not know, but it seems to me that it would be very simple to expand the Combines Act to give them powers.

MR. MAY: Is there not the possibility that if, at a conference table under the competent jurisdiction of Government, a man persisted in an unfair trade practice, you could then invoke the only section of the Criminal Code I have never heard of being invoked, Section 498A (c)? If the facts were all produced before the Government Board, and the man insisted upon continuing in what was obviously an unfair trade practice, do you not think you would have moved a long way towards proving a case under section 498A(c)?

THE CHAIRMAN: You could start the proceedings all right, though I would not want to guarantee what the decision might be.

MR. MAY: I must say that I have the same confidence in Section 498A (c) which you appear to have,

which is none at all.

THE CHAIRMAN: It is rather a difficult thing to prove by evidence in court, you see.

MR. MAY: That is right.

MR. ANGLIN : I am just wondering if conditions have not caught a number of people in a whirlpool which is spinning them all around. I think that the suggestion which Mr. May has put, of sitting around a table, might bring wonderful results. I do not know why there should be so much difference between the position here as compared with ours in the East. I have mentioned the two chains, one of whom owns their own bakery and bakes all their own bread. If it was such a wonderful practice to sell that bread as a loss-leader, why have they not done that before, but yet I have never known them to cut the price of a loaf in their stores at any time. If one of the others stepped in on this, we are calling it a bad practice but I do not know what to call it -- is that ethical competition? I still insist upon that point. There is another factor which amounts to thousands across this Canada of ours, and that is the family who are trying their best to keep themselves going. Why should their throats be cut at the same time by some super-market. I cannot see any justification. If those firms in the East have found it good sound business to sell at fair prevailing prices, why should it be used as a loss-leader in this province? Nobody can tell me that they have improved their businesses one iota more than they could have done by sound advertising and selling activities. Cutting

somebody else's throat in the same industry for the benefit of themselves, I cannot see any justification for. I may be old fashioned, but if so, there are a lot of us who are old fashioned in the East.

THE CHAIRMAN: I thought you were suggesting that you were more common sense down there?

MR. MAY: I would suggest they are.

MR. ANGLIN: Somebody said that the 24 ounce loaf of bread was the same everywhere. I do not agree. Regardless of your pricing in any way, the price of a loaf of bread is only a fraction but the quality of that loaf is the human element that goes into it and I will defy anybody in Canada to put a loaf alongside ours in the East. It is the human element that has gone in there. They are interested in the job, and there is so much all through that process which will affect the quality on which the consumer buys. You may have exactly the same cost and ingredients but you can ruin it or you can have a rich loaf of bread; your costs will be exactly the same.

MR. LAJOIE: I believe there is a little confusion there because the Director's supplementary report shows that those chain stores have different mark-ups for different products, and that they really have a mark-up on their 15 cent loaf of bread which is higher than their mark-up on many other items.

MR. ANGLIN: I would just like to bring out this point: we do not go to one front door or one back door; ours is altogether wholesale with the stores. They may save one-fifth of a cent in their delivery costs, but I

doubt if it is any more, and I cannot sell bread at 15 cents. Ours is all wholesale to the stores, chain stores and independents. You cannot tell me they are marking up a fair profit the same as the independent merchant has to do. I think they should do that, or cut his throat, one of the two; I do not know anything about the percentages; I know my own facts and my own costs.

MR. LAJOIE: Certainly we do not have any other figures than those provided by the Director in his supplementary report.

MR. MAY: Will you allow me to deal very briefly with this set of figures. This is page 16. There is only one cost figure in there, as I said this morning, and that is the cost of the man who makes his own bread. All the other figures are the selling prices of the baker. I do not know to what extent these prices that the baker sells for represent some element of loss-leadering or represent a type of sale on which he has to make more on another type of goods. With respect to the only known cost, the man says it costs him 12.75 cents at the bakery platform. I suggest to you it is probably costing him, with regard to the delivery of that bread to all the stores which that baker services, not less than 10 percent to deliver it at the store. You have now arrived at a price of 14 cents. If you add what I think is a normal mark-up -- and I am going by studies which other people have made -- 15 percent, you arrive at a selling price of 16 cents, and this man is selling bread at 15 cents, and incidentally, this is

probably the company that decides the price of bread in Eastern Canada.

MR. WHITELEY: Are you suggesting that if there is not a 4 cent differential but there were a 3 cent differential, you would not be here today?

MR. MAY: I think if the differential were less than it is today this part of my argument would fall down, and I would be talking to you simply about free bread and half price bread.

MR. WHITELEY: You do not have to go too far back to find that situation, do you?

MR. MAY: Well, I am arguing that this four cent spread or its equivalent is a permanent condition.

MR. WHITELEY: I am wondering whether you would regard a three cent spread as equivalent to a four cent spread.

MR. MAY: As I said before, the Government are the only people who can find out what the right cost of that bread is. I cannot find out.

MR. MORRISON: I have employed a very expensive cost accountants from a large American city to come and investigate our operations, and one of the principles that they laid down was that every item manufactured must bear its own ratio of raw material, manufacturing costs, delivery and overhead, as a matter of principle. All I would ask is that somebody similar to these cost accountants who would be recognized by the Government would take this bread and say at what price it should sell. If it is 4 cents, then we will just abide by it as Mr. May has said, but I believe in my heart that they

could not justify it standing on its own feet. I think that is all we ask. We have said over and over again that if we could not compete we do not deserve to exist.

MR. HEAGLE: Mr. Chairman, if the super-markets charged into the merchandising of bread, all the expenses, that properly it should carry, I would be very surprised if they could show more than $1\frac{1}{2}$ cents difference. Now, these separate cases which we present do not do justice to our case simply because I am afraid that we are unable to illustrate the cumulative effect of those things which keep repeating. I would like if you will permit me to do so to summarize for you the effect of loss-leader selling as it affects the bakery industry. First of all by deception through price juggling it destroys a consumer's confidence, which is a most important thing to the baker, which causes the consumer to stop or delay purchasing from the baker. That is our experience and I believe our submissions have illustrated it. Secondly, the loss-leader practice develops undesirable practices of secret discounts, advertising allowances, premiums, discriminatory prices and so forth, all of which are paid for by the smaller merchant and thereby not earned through efficiency of operation, but destroy the smaller efficient merchant's opportunity to compete fairly. Thirdly, in our case it has forced on to an entire industry a depressed standard of employment which is today beyond further toleration. Fourthly, it is a means of reducing the payment of profits tax and of destroying the ability of others to earn taxable profits. Fifthly, depressed profits prevent our industry attracting

capital and skilled men, which every industry must have, situation and our manpower/in the bakery industry is becoming most desperate; we just simply cannot compete with the standard of living which other industries are able to provide for their employees, because of this depressing effect which loss-leader selling has on our comparatively specialized industry. It is most serious to us and we sincerely hope that you gentlemen will come up with a solution after gathering all possible information that you can. We ask for no favours but that we should have a fair chance of doing the job that we, in the industry, want to do for the consuming public and for the national economy as a whole.

MR. MORRISON: And for our labour.

THE CHAIRMAN: Well, gentlemen, I would like to express to you the thanks of the Commission for the very well prepared and instructive brief which you have presented today and for the very fair-minded way in which you have discussed the matter with us and answered all the questions which were within your knowledge. We will certainly take into consideration all that you have said. Personally I was greatly interested in your proposal of a remedy. I do not know whether we shall reach any conclusion at the end along those lines, but I was certainly very interested in getting a concrete proposal for some form of solution which was of a character which we had not heard before.

Thank you, gentlemen.

PRESENTATION OF MR. A. F. MALEY

(Maley Manufacturing Company)

MR. WICKWIRE: Mr. Chairman and gentlemen, Mr. A. F. Maley of the Maley Manufacturing Company, Ottawa, I think has a statement which he wishes to make before this Commission.

THE CHAIRMAN: Very well, Mr. Maley.

MR. MALEY: As regards this question of loss-leader there is quite a difference of opinion as to what it means. I think in some circles it has some meanings and in others it has another. Here is my definition; see what you think of it: a loss-leader is any article or service included in deals without charge, given away free, or sold at a cut price, designed to put a competitor or producer out of business in order to increase sales or monopolize trade.

THE CHAIRMAN: Do not you think that goes rather beyond what is involved in the term "loss-leader"? It sounds more like a predatory form of price-cutting designed to put people out of business, whereas the term loss-leader usually is intended to apply to a device for getting more business for the person who uses it; the purpose is to gain business for himself rather than to put somebody else out of business. I was just thinking that your definition takes in a wider field than the term would normally imply.

MR. MALEY: Supposing you were in the Chrome Cleaner business as I am. For three years I had made nothing else, and after I had made the stock, canned it and labelled it, I found out that a competitor was giving

away chrome cleaner. Would not that put me out of business?

THE CHAIRMAN: I should think it might have that effect all right, but I do not know that it would necessarily mean that they were doing it for that reason.

MR. MALEY: Take this Johnson's chrome cleaner. This is some advertising that I picked up; it is the Imperial Oil Company's advertising. It shows that the oil companies and the polish people are working together. Now I have the articles here; I thought I would bring them along so that you could see them. If a dealer buys 2 dozen of this, and a dozen of this, he gets a dozen cans of chrome cleaner free.

MR. WICKWIRE: Perhaps you had better just describe what you mean by this. If he buys a dozen of what?

MR. MALEY: If he buys two dozen of this.

MR. FAVREAU: For the benefit of the reporter, would you describe what you mean by "this"?

MR. WICKWIRE: That is Carnu, is it not?

MR. MALEY: Yes.

MR. WICKWIRE: If a dealer buys a dozen of Carnu --

MR. MALEY: No, two dozen of those.

MR. WICKWIRE: If he buys two dozen of Deep Gloss Carnu, what happens?

MR. MALEY: And one dozen of this.

MR. WICKWIRE: What is its name? That is Johnsons Car Plate and Johnson' Carnu.

MR. MALEY: Yes. Then he gets 12 of these free.

THE CHAIRMAN: What are these?

MR. WICKWIRE: Then he gets 12 of Johnson's --
what is that?

MR. MALEY: Chrome Cleaner. You will see that
in the advertisement.

MR. WHITELEY: What is the dealer's position
now with those articles?

MR. MALEY: If the dealer sells this ---

MR. WHITELEY: If he sells what?

MR. MALEY: If he sells the Carnu and the Car
Plate he is supposed to give one of these free -- that
is the Chrome Cleaner.

THE CHAIRMAN: The dealer gives the Chrome
Cleaner to a customer who buys those?

MR. MALEY: Yes. If he buys Carnu and Car Plate,
he gets one of these free.

THE CHAIRMAN: If he buys two Carnu and one Car
Plate, is that right?

MR. MALEY: Yes.

THE CHAIRMAN: He gets one Chrome Cleaner; that
is to say the customer does?

MR. MALEY: Yes. They have different combina-
tions but in all their combinations, that is a can
which is given away free.

MR. FAVREAU: Is it always a product of the
same company which makes the other products which are
actually sold?

MR. MALEY: Yes.

THE CHAIRMAN: These are all Johnson's products?

MR. MALEY: All Johnson's yes, but they do give different deals to different distributors; they give them a little different deal as they group them differently.

THE CHAIRMAN: But is the Chrome Cleaner always the one that is given away?

MR. MALEY: The Chrome Cleaner is never charged for.

THE CHAIRMAN: That is always the one that is given away?

MR. MALEY: That is always the one that is given away.

THE CHAIRMAN: You do not find any cases in which, if you buy the Chrome Cleaner they will give away the Carnu? You have not found any cases in which, if a customer buys Chrome Cleaner they are given Carnu? It is always the other way around?

MR. MALEY: Yes. There is none of this given free. That is always charged for but this is given free.

MR. WHITELEY: Is this the first season that the Johnson's Chrome product has been on the market?

MR. MALEY: Oh no. Johnson's Chrome Cleaner has been on the market for 10 or 15 years, I think. It has been on the market for 10 years I know, and I think 15.

THE CHAIRMAN: That is the Chrome Cleaner?

MR. MALEY: The Chrome Cleaner has been on the market for four years that I know of and it might have been more.

MR. FAVREAU: Is it a good seller?

MR. MALEY: The Chrome Cleaner?

MR. FAVREAU: I am not asking if it is a good chrome cleaner; I am asking if it is a good seller.

MR. MALEY: They just give it away; they do not sell it.

MR. FAVREAU: Has it always been given away? Or was it at one particular time sold on the market, that chrome cleaner?

MR. MALEY: I will go back for three years, and at that time when they bought two cans -- that is the Carnu and the Car Plate, they got one free. You would see it in all the advertisements in the windows and all over. They used to give it to the customer direct; now they seem to give it to the oil company, the distributor and they hand it out whatever way they want to.

MR. WICKWIRE: I suppose the result of that is that the distributors will not purchase your product from you, is that correct?

MR. MALEY: Yes, I have occasions of that happening. When I go into stations and want to sell them the product, they say: "Well, I am getting Johnson's free. I have got to buy this polish and I am getting this Chrome Cleaner free. Why should I buy yours?"

THE CHAIRMAN: That would be a pretty good argument for many people: if they can get something for nothing why pay for it.

MR. WICKWIRE: But you can sell your products to other distributors who do not handle Johnson's products; is that correct?

MR. MALEY: Every service station in Ottawa has Johnson's.

MR. WICKWIRE: Every service station? Every one?

MR. MALEY: Yes. There may be some that put it up under their own label. Shell have labels on their polishes so you do not know what they are. They may be Johnson's or C.I.L., but they are put out under the company's service station name.

MR. WICKWIRE: Do some of the service stations in Ottawa sell your polish?

MR. MALEY: The B & A will sell it.

THE CHAIRMAN: The B & A Oil Company?

MR. MALEY: Yes. You can go in there and if you have the stuff you can sell it, there is no question. But in the case of the other oil companies they have a polish that they push. They have it in their contract, a lot of the service station owners; they have to meet a quota and sell so much, and if they do not do it, there is something done about them.

MR. WICKWIRE: Is that because they have a franchise to sell certain products?

MR. MALEY: Yes. None of these oil companies makes a polish.

MR. WICKWIRE: We are talking about service stations now.

MR. MALEY: The service stations.

MR. WICKWIRE: Selling your cleaner.

MR. MALEY: Yes.

MR. WICKWIRE: You say some of them will not buy your cleaner for resale because they are selling Johnson's.

MR. MALEY: Well, with the exception of the B & A none of them will buy the polish. I happen to have a cleaner that is just a little better than the others and so many customers are calling for it that maybe 40 percent of their stations bootleg it. They do not put it on the shelf; they have it under the counter some place and if people call they can get it. If they put it on their shelves in a lot of places, the inspectors come around and tell them to take it off.

MR. WICKWIRE: Your trouble is that you cannot build up your volume, is that right?

MR. MALEY: I cannot build up my volume, not in the polish.

MR. WICKWIRE: What sort of volume do you have?

MR. MALEY: In polish very little. I have just started with that stuff.

MR. WICKWIRE: When did you start?

MR. MALEY: About a week.

MR. WICKWIRE: About a week ago?

MR. MALEY: Yes. I have taken a few samples out but they will not touch the polish. As regards the chrome cleaner on account of the special demand there is for it, I sell it pretty good.

THE CHAIRMAN: How much do you sell of the chrome cleaner in a year? Have you any figures for the last two or three years?

MR. MALEY: I could not just give you the figure but I think you will find my chrome cleaner in 50 percent of the stations -- not on the shelves, but hidden away.

THE CHAIRMAN: You said the B & A Company would

handle it. Do they put it on the shelves?

MR. MALEY: Yes.

THE CHAIRMAN: But the others handle it under the counter.

MR. MALEY: You take the B & A. They do not bother about accessories at all; they make their living out of gas, oil and greases, and they leave the other entirely to the station operator to handle it the way he wants to. They do not interfere with him.

THE CHAIRMAN: But the other companies, you say, have some arrangement with the particular supplier of accessories, is that right?

MR. MALEY: I will tell you about one. There is this Canadian Petrol, the Fina Company. They have bought that property of Mahoney & Riches, and they are putting up five stations here. I wanted to sell them some chrome cleaner. "Well", he said, "I will tell you plain; we have made a deal with Firestone and you have got to sell them to sell us". "Well," I said, "They only handle American products; they handle Johnson's". "I do not care", he says, "that is where we have got to buy it so that means we have got to deal with Firestone in Akron, Ohio". These oil companies instruct their branches in Canada with whom they have got to deal; it is a cartel between the oil companies and the polish companies.

THE CHAIRMAN: This is rather getting away from the loss-leader matter.

MR. WICKWIRE: That has not very much to do with the subject of loss-leaders, as the Chairman

suggests, has it? That is a different subject from loss-leaders which is what we are discussing.

THE CHAIRMAN: It may be very serious for you but it is not a loss-leader; that is to say, these contracts to which you are referring for handling the accessories of a particular company only, is not a matter of loss-leadering. It is another problem which can be pretty serious too, but it is not the same thing.

MR. MALEY: That is the serious part of it. So far as this question of the Chrome Cleaner is concerned, I could do the same as they are doing; I could add 15 cents to my can of Chrome Cleaner and give away the polish but I cannot get into the stations to give it away because they will not let me in. If they were to put my polish on their shelves it would mean them losing their franchise and they just will not put it on.

THE CHAIRMAN: But you do a substantial volume of business with your Chrome Cleaner, do you?

MR. MALEY: Yes.

THE CHAIRMAN: Have you any figures to give us to show how it has been affected by this practice during the last few years, that is the practice of somebody else giving away Chrome Cleaner?

MR. MALEY: I would say that there are 25 percent of the stations that I cannot operate at all.

THE CHAIRMAN: I am not referring to that so much as to what extent your business has been affected or injured by the giving away of a chrome cleaner made

by somebody else.

MR. MALEY: I would say 25 percent.

THE CHAIRMAN: Have you got any accurate figures? Will your books show it?

MR. MALEY: I cannot tell you just the amount in dollars.

THE CHAIRMAN: Have you got books which contain figures or any information which would help to verify that?

MR. MALEY: Well, I have not really got that.

THE CHAIRMAN: We need to have facts in order to know what you are suffering and why. For you simply to say, "I think it is 25 percent I have lost as a result of this", is not very much in the way of proof.

MR. MALEY: Well, I will tell you: there is a station -- I do not want to give the name, but I will give it; it is Kelly's, -- to whom I used to sell about 4 dozen a year. I did that for two years and then he quit altogether. I said: "What's the matter? Don't you like my chrome cleaner?". He said, "I cannot put that in; I have got to put in the company's chrome cleaner under pressure, under compulsion. I have got nothing against yours".

THE CHAIRMAN: That is the other problem. That is the question of shutting you out, as you claim, by these contracts. What I was trying to get at is the effect on your business of another make of chrome cleaner being given away. That comes much closer to a loss-leader practice.

MR. MALEY: The effect on my business will only

be about 25 percent, but the effect on other companies that make a similar chrome cleaner to that, I am sure the effect on them would be 75 percent. I happen to have a chrome cleaner that is a little better than the rest.

THE CHAIRMAN: You are not suffering as much as some of the others are; that is what you mean.

MR. MALEY: No, I am not.

MR. WHITELEY: I notice in the folder you submitted to us that it does suggest a price for this chrome cleaner?

MR. MALEY: Yes.

MR. WHITELEY: Is it not the case that in other years this was actually sold to customers?

MR. MALEY: When they sell it they get 69 cents for it. Sometimes they do not give the Chrome Cleaner, to the party who buys the other two. He does not ask for his Chrome Cleaner, and they do not give it to him. For any that they sell it is 69 cents.

MR. WHITELEY: I say, in other years, when they did not have this special offer, did not they actually sell the Chrome Cleaner?

MR. MALEY: No, they gave it away.

MR. WHITELEY: They have always given it away?

MR. MALEY: Last year or the year before, and part of last year they gave it away. They put it in the window and say: "Buy the Carnu and the Car Plate and you get this free". You must have seen it in all the stations, big advertisements in the window.

MR. WHITELEY: And that, you say, they started

last year?

MR. MALEY: This year they sell it to the dealer and he distributes it himself. They give it to him free, but before they used to give it to the public free, and they had the advertisements out. They have different combinations, but in none of the combinations do they charge for it.

MR. WICKWIRE: What happens if I go into a service station and I just want the Chrome Cleaner and not the other things. Do I get the Chrome Cleaner free or do I pay 69 cents for it?

MR. MALEY: Supposing you go to the Champlain service station on Wellington Street here. If you are a customer of his and you want a Chrome Cleaner, he will say: "Here I have got two; I have got Johnston's which I will give to you, but if it is Maley's, it is 75 cents". Nevertheless I sell more of mine.

MR. WICKWIRE: My point is: will he give me the Johnson's cleaner or do I have to buy the Carnu and the Car Plate?

MR. MALEY: You have got to buy the Carnu and the Car Plate.

MR. WICKWIRE: If I do not want the Carnu, if I have no use for it and it just so happens too that I have no use for the Car Plate, but I do need some Chrome Cleaner and that is all I want, will he give me a can of Johnson's Chrome Cleaner or will I have to pay for it?

MR. MALEY: Someone will have to pay for it. If you go to someone like Champlain he has so much left that he will give it to you.

MR. WICKWIRE: But normally I would have to pay for it?

MR. MALEY: Yes, I would say so. I do not know. Well, those seem to be the principal points of the thing. I could tell you what I recommend, but there is not much use in taking up too much of your time. You take these service stations having their own chrome cleaner and having their own polish. They have put the last Canadian polish company out of business. There is not a Canadian polish company in business any longer in Canada.

MR. WHITELEY: Of course these products are made in Canada. These products you have in these samples are made in Canada.

MR. MALEY: Yes, but Canadian-owned products, I mean.

MR. WHITELEY: I say these are made in Canada.

MR. MALEY: Yes, but they are not Canadian owned.

MR. WHITELEY: The companies that make them have some relationship with America; that is what you mean?

MR. MALEY: Yes, they are all American owned companies. The B & A Oil Company is the exception. You have a chemical research bureau down at Eastview there and they go to work to test our polish for us, but they might as well close that place up if we cannot sell it, and we cannot sell polish to any place except the B & A because they will not buy it. The remedy, I think, is that all merchandise and services should be priced separately and fairly, not sold in deals or

offered as premiums. I think that is the remedy which would dispose of loss-leaders.

THE CHAIRMAN: Yes, if you could make it stick, it would certainly dispose of loss-leaders.

MR. MALEY: Yes, I think that would do it.

THE CHAIRMAN: If you could find a way of making people handle their transactions in that fashion you would not have any loss-leaders because they would always sell at regular prices.

MR. WHITELEY: You might have some other consequences.

MR. MALEY: If a loss-leader is harmful it is an unethical transaction.

THE CHAIRMAN: Most of your problem, it seems from what you have said, is due not so much to any aspect of loss-leadering as to these special contracts which you say exclude you from your only reasonable market.

MR. MALEY: That is correct. They were saying a few minutes ago that there should be some authority to decide what is an unethical practice. I think that is what we need, somebody who has the authority to say "you can do this, but such things you cannot do as they are not in the interests of the country as a whole".

I guess that covers it all.

THE CHAIRMAN: Thank you very much, Mr. Maley; we are pleased to have your presentation.

--- Whereupon the hearing terminated at 4.15 P.M.

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RESTRICTIVE TRADE PRACTICES COMMISSION

LOSS LEADER SELLING

TRANSCRIPT OF EVIDENCE

Vol. 3

TORONTO

MAY 31 1954

Regarding Loss-Leader Selling

Hearing held (in public) in the Senate Chamber, University of
Toronto, Monday, 31st of May, 1954.

PRESENT

C. Rhodes Smith, C.C., M.A., LL.B., B.C.S.	Chairman.
Guy Favreau, C.C., B.A., LL.B.,	Member.
A. S. Whiteley, B.A., M.A.,	Member

APPENDICES:

Mr. M. W. Wickwire, Q.C.,)
and) Counsel for the Commission
Mr. Paul Gerin-Lajoie)

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TORONTO, MONDAY, MAY 31ST 1954.

Delegation from: MASTER PHOTO FINISHERS AND
DEALERS ASSOCIATION.

Comprising: Mr. W.J. Ivay,
Canadian Executive Manager of
the Association.
Mr. Ron Graham,
Greyhound Photo Service.
Mr. Doug Dollar,
Mercury Photo Service.

---The hearing commenced at 10:00 a.m.

THE CHAIRMAN: Gentlemen, the hearing will come to order. This, as you know, is a step in the inquiry into loss-leaders across Canada. The first public hearings before the Commission were held in Ottawa in the week beginning two weeks ago today and we are proceeding now with the proceedings in Toronto from a number of organizations, business houses and some individuals who have indicated their desire to present briefs and make representations.

We start this morning with a brief, I understand, to be presented by the Master Photo Dealers and Finishers Association, and I would ask whoever is appearing on their behalf to come forward.

MR. IVAY: Mr. Chairman, and gentlemen, I thank you for the privilege of appearing before you on behalf of the Master Photo Dealers and Finishers Association so early in your sittings.

THE CHAIRMAN: Just tell us your name, please.

MR. IVAY: W. J. Ivay, Canadian Executive Manager

of the Master Photo Dealers and Finishers Association.

THE CHAIRMAN: Is anybody appearing with you, Mr. Ivay?

MR. IVAY: Yes, I have two finishers here whom I can call for information.

THE CHAIRMAN: They might come to the table if you decide to have them with you and if you would just let us have their names and if they are officials of the organization.

MR. IVAY: Mr. Ron Graham, Greyhound Photo Service; Mr. Doug Dollar, Mercury Photo Service.

THE CHAIRMAN: Yes, Mr. Ivay?

MR. IVAY: The Canadian Branch of our Association is made up of photographic dealers, finishers, distributors and manufacturers from across the Dominion, and at a recent convention, why, we had members there from as far as such distributed points as White Horse and the Yukon Territory; Victoria, British Columbia; St. John's, Newfoundland; Halifax, besides Ontario and different provinces.

My personal interest in the photographic business is that I publish a photograph trade supplement in connection with drug merchandising, drug trade publication. Because I am not connected with any photographic firm, I was requested by the head office of the Association to head the group here in Canada. I accepted on the understanding that I would have a free hand to promote unity and fair dealing amongst the different dealers and finishers here.

It is in a matter of this fair dealing among our members that I am here before you now. I have two advertisements, one from Toronto and one from Sarnia, where photographic processing firms are offering through their dealer agents a free roll of unexposed film supplied by the processing firm with each exposed film left for finishing and printing.

Since the average charge for developing and printing a roll of film is 90¢ and the retail price of an unexposed roll is 45¢, I suggest that this is a loss-leader practice by thinking to attract business to this processing firm's dealer to the detriment of other firms and their dealers, and I invite your consideration.

Now, this presentation is without malice to any firm, because most of them are members of our Association, but what I want to find out is, do you people consider this as a loss-leader? In my mind it is, but I do not know your opinion of it and I have these two advertisements that show that.

THE CHAIRMAN: Mr. Ivay, perhaps you would file those with the Commission so that they will see exactly what they refer to.

MR. IVAY: Yes.

MR. WICKWIRE: I would suggest, Mr. Chairman, that Mr. Ivay perhaps for the purpose of the record could read his brief into the record.

THE CHAIRMAN: Yes, I thought we would mark those advertisements as exhibits to go along with his brief.

MR. WICKWIRE: Yes, all right.

THE CHAIRMAN: You will read your brief?

MR. IVAY: "My letter of May 7th to your Commission was replied to by Member A. S. Whiteley who advised that meetings in Toronto would be held in the Senate Chamber of the University of Toronto.

"The inquiry of this Association is: Is the giving away free of a roll of new unexposed film to a customer who picks up and pays for a set of prints and negatives of an exposed roll left with the dealer, considered a loss-leader?

"Most drug stores send their exposed rolls to one or another of the larger finishing establishments for processing and printing.

"The operator of one of these establishments is endeavouring to bring more customers into his 'dealers' stores by offering this free roll of film through these dealers to the customers."

Then this next part here I have revised because I have said:

"The average cost to the customers for a set of prints and negatives from an exposed roll is \$1.06".

On further inquiry I find that was 90¢.

"The retail value of an unexposed roll is approximately 50¢."

The tax since then taken off brings it down to 45¢.

"This method of using a roll of film as a 'come-on' to get the exposed roll left with one of the offending finishers' dealers, is causing a loss of business to other finishers and their dealers.

"The offer is generally made through a dealer

"for a period of three or four days duration.

"We would like to have your Commission discuss this scheme when you are meeting in Toronto so that some of the finishers might appear with me to talk this situation over with you."

THE CHAIRMAN: If you would bring the advertisements, Mr. Ivay.

MR. IVAY: This one offers it in very small print at the bottom.

MR. FAVREAU: This is only for black and white films?

MR. IVAY: This is black and white.

---EXHIBIT T-1: Circular headed "Free Film Offer" marked "Good only on dates shown, Monday to Thursday, May 24th, 25th, 26th and 27th."

THE CHAIRMAN: The newspaper advertisement --

MR. IVAY: From the Sarnia Observer.

THE CHAIRMAN: Taken, I am informed, from the Sarnia Observer.

MR. IVAY: Yes, that was sent in by one of the drug store members up there.

THE CHAIRMAN: Have you the date of the issue?

MR. IVAY: No, I did not get that.

THE CHAIRMAN: It does not appear on this clipping. It is undated and refers to the re-opening of a studio offering a free plastic cup and saucer with every purchase.

MR. IVAY: In the small print, sir, is the story about the free roll of film.

THE CHAIRMAN: Oh, yes. Also containing a statement

that a roll of film will be supplied free for one year with every camera purchased, one roll or a hundred rolls, "if we do the finishing at regular prices".

---EXHIBIT T-2: Clipping (undated) from Sarnia Observer containing gift offer with every purchase on re-opening of a studio, and and offer, on purchase of camera, of free films for one year, if we do the finishing at regular prices".

THE CHAIRMAN: Do counsel desire to see these?

(handed). Proceed, Mr. Ivay. Does that conclude your presentation?

MR. IVAY: Yes, unless you have any questions.

THE CHAIRMAN: We may have some questions. Do either of your colleagues desire to add any comments at this stage?

MR. IVAY: Yes, Mr. Graham has from his own records one store, how business changed during the week that this was in effect at one of the other processing firm's dealers.

THE CHAIRMAN: Perhaps Mr. Graham could just explain that situation.

MR. GRAHAM: We have an account across the road from this particular account that you have there that is giving a free roll of film away.

THE CHAIRMAN: Is that in Sarnia?

MR. GRAHAM: No, that is on Kingston Road Toronto.

THE CHAIRMAN: That is the first circular you are referring to?

MR. GRAHAM: The first week of May this account of ours did \$28.39 worth of business.

THE CHAIRMAN: Is that in finishing?

MR. GRAHAM: That is in finishing.

THE CHAIRMAN: That does not include any merchandising?

MR. GRAMAM: No, that is just straight finishing. The second week was \$25.32 and the third week was \$26.82, and then last week which is normally one of the biggest weeks of the year in the photographic finishing business, last week was the week that this store gave the free roll of film away, and this account of ours across the road did \$12.67, so it shows a loss of 100%.

THE CHAIRMAN: Do you mean 50%?

MR. GRAMAM: 50%.

THE CHAIRMAN: You still did some business.

MR. GRAMAM: Oh, yes. It was approximately cut in half, and normally that week would have been, I would say, a third higher than any of the other weeks.

THE CHAIRMAN: Because it is the week of the first big summer holiday.

MR. GRAMAM: Big holiday. I mean, all our other accounts were up at least a third over the previous weeks, whereas this account was down 50%, being right across the road from that dealer that was giving the film away.

We also lost an account at Allandale through this finisher giving a free roll of film away.

THE CHAIRMAN: How far away is that?

MR. GRAMAM: That is about 60 miles, that is right near Barrie, 60 miles outside Toronto approximately.

THE CHAIRMAN: What is the connection between this advertisement and an account 60 miles away?

MR. GRAMAM: That particular advertisement there has nothing to do with it, but this advertisement has been

going on at dealers all across Ontario. That is just one particular advertisement that we brought along. That same thing has been going on at drug stores all over Ontario.

THE CHAIRMAN: Was the same thing going on in the vicinity of Allandale?

MR. GRAHAM: Oh, yes.

THE CHAIRMAN: Some finisher there was --

MR. GRAHAM: No, it is the same finisher. He has accounts all over Ontario just the same as we have. We have dealers all through Ontario.

MR. IVAY: Mr. Chairman, on that exhibit, in one you notice that it is a printed form that they just filled in the dates and the name of the store and things like that

MR. GRAHAM: Now, this Allandale Drugs, we have done that particular drug store for at least fifteen years. Then this other finisher came along and offered them a free roll of film with every film that their customer brought in, which we refused to do, so we lost their business.

THE CHAIRMAN: For the Graham Photo Service you operate across the whole of the Province?

MR. GRAHAM: Oh, yes. I think that is all I have to say.

THE CHAIRMAN: Mr. Wickwire, do you wish to ask any questions?

MR. WICKWARE: Yes, I have a few, Mr. Chairman. I don't know whether Mr. Ivay or Mr. Graham wishes to respond to a few questions I have, or reply to them. First of all, is the 50¢ mentioned in your brief as the cost of an unexposed roll, which you say now is 45¢, is that a standard price in the trade or industry?

MR. IVAY: That is taking an average on the different sizes of rolls, 45¢ would fit in there. The same with the cost of developing. You see, I had \$1.06 and I was figuring on a 12 exposure roll at 8¢ and 10¢ for developing, which gives you \$1.06, but there is about 50-50 in the use of cameras that take an 8 exposure roll and 12 exposure.

MR. WICKWIRE: Then that is pretty well a standard average, is that it?

MR. IVAY: Yes, so that if you change that to the new figure that I have given of 90¢, you get closer to it than \$1.06. Then the same way with the --

MR. WICKWIRE: ~~well~~ the \$1.06 (now it is 90¢) is the cost to the customer?

MR. IVAY: That is right, yes.

MR. WICKWIRE: You say that the retail value of an unexposed roll is approximately 45¢ to 50¢?

MR. IVAY: Yes.

MR. WICKWIRE: From whom does the distributor receive that film?

MR. IVAY: From the manufacturer, he buys it from the manufacturer. I have followed him -- when this thing first started, he says he buys the film and pays for it from the manufacturer so that he can sell it or give it away whatever he likes.

MR. WICKWIRE: What would the cost of that roll be from the manufacturer?

MR. IVAY: About 28%, about 30¢. He would pay the manufacturer, and he gives it free to the drug store to pass along.

MR. WICKWIRE: Well, you are perhaps a little bit

ahead of me. Does he get any reduction in price for quantity purchased from the manufacturer?

MR. GRAHAM: No, he wouldn't, not by buying enough to give away, he wouldn't get any.

MR. WICKWIRE: I am not saying by buying them to give away, but for buying in quantity for any purpose would he not get a quantity discount?

MR. GRAHAM: All the finishers get what they call the top discount. I mean, they all buy enough film to get the top brackets.

MR. WICKWIRE: I see, and any distributor can get the same price for X number of films purchased?

MR. GRAHAM: That is right, in other words we would get exactly the same price as what he would buying films.

MR. WICKWIRE: Well, in the distribution of that 50¢ roll from you to a dealer, normally what price would it cost the dealer:

MR. GRAHAM: In selling the film to the dealer?

MR. WICKWIRE: Yes.

MR. GRAHAM: Well, we don't actually sell the films to the dealers ourselves, not through the drug store. They buy them. They buy them separately mostly, different stores.

MR. IVAY: They would buy them from the manufacturer himself, wouldn't they?

MR. DOLLAR: No, they buy them from the wholesaler. The wholesale drug firms sell them at a discount of about a third off the list.

MR. WICKWIRE: To the dealers?

MR. DOLLAR: To the dealers, to the stores.

MR. FAVREAU: That would bring them down to about 30¢.

MR. DOLLAR: Yes.

MR. WICKWIRE: The same price that you would purchase. What do you do with your films if you don't sell them to the dealers? How do you get rid of the films you buy?

MR. DOLLAR: We purchase films, we are not, you would say, in the wholesale business, but only as a source of easy supply. These out-of-town accounts get shipments from the wholesalers, we will say, once a week. They find that they are short of films. They are getting photo work from their finisher every day. They write in and say "Send me six rolls of films". We will send them out. In that way we supply our dealers with films when they are in short supply, but not generally in the wholesale business.

MR. WICKWIRE: You don't supply the trade generally?

MR. DOLLAR: No, it is only as a convenience to our dealers that we supply them with films. There are lots of dealers do not carry any quantity of colour film or movie film.

MR. WICKWIRE: Is that the generally accepted practice as far as finishers are concerned?

MR. DOLLAR: I think so.

MR. IVAY: Although the finishers do, in all of them, carry film there for people who come in the store to bring in their finishing direct. Then you sell film out to them over your own counter.

MR. DOLLAR: At regular retail prices.

MR. WHITELEY: Excuse me, we might get the scale of

prices. Do you supply the film to the dealers at cost?

MR. GRAHAM: Mr. Ivay mentioned 45¢. Most films are 47¢. You work on a very small margin just for the convenience of your dealers.

MR. WICKWIRE: In those instances where you do sell films where the dealer happens to be in short supply, what is the price of that film to the dealer from you?

MR. GRAHAM: It would be approximately about 32¢.

THE CHAIRMAN: You mean your handling of films is only for convenience or accommodation of your dealers?

MR. GRAHAM: That is right.

THE CHAIRMAN: You sell them at practically cost?

MR. GRAHAM: You would be making 2¢.

THE CHAIRMAN: You would not call that a normal merchandising mark-up?

MR. DOLLAR: No, because we are not in the wholesaling business.

THE CHAIRMAN: Yes, that is what I mean.

MR. WICKWIRE: Could we just for a minute explore the margin on the cost of the development, \$1.06, that is what the customer pays.

MR. DOLLAR: The dealer gets a third off that.

MR. WICKWIRE: The dealer gets a third, 30 and some odd cents, is it?

MR. DOLLAR: Yes, off \$1.06 he would get 35¢.

MR. WICKWIRE: That leaves some 70¢ remainin_g?

MR. DOLLAR: That is right.

MR. WICKWIRE: What margin does the finisher enjoy on that?

MR. GRAHAM: The finisher has what is left, would be

35 from \$1.06, that is for a 12 exposure roll. On a 74¢ roll, that is an 8 exposure film, that would be 50¢ that the finisher has left. Therefore if he gives a roll of film away which approximately costs him 30¢, he only gets 20¢ for that finishing.

MR. WICKWIRE: What would his cost be to finish that roll?

MR. DOLLAR: I cannot guarantee that these figures are correct, but the gross on photo finishing business is between 25 and 30% gross profit.

MR. WICKWIRE: I see.

MR. DOLLAR: Some finishers, their overhead is much higher than others. Now, we are right down at Front and York Street, where rents are high and Mr. Graham is on Adelaide Street. The finisher that gets out further, his rents are lower, his taxes.

MR. WICKWIRE: So his costs would be lower?

MR. DOLLAR: Yes.

THE CHAIRMAN: When you are speaking of the margin, I just want to be quite sure, you say 25 to 30%, that is, of your receipts?

MR. DOLLAR: Gross.

THE CHAIRMAN: Your gross receipts?

MR. DOLLAR: That is right, that is your gross profit.

THE CHAIRMAN: And your costs are higher of course in the high rent district, but if your business is proportionately larger, I suppose that the cost per unit is not much higher.

MR. GRAHAM: That is right.

MR. WHITELEY: By the gross do you mean the difference between the gross and the cost of the film?

ence between the material cost and your selling price?

MR. DOLLAR: And your overhead.

MR. WHITELEY: What is the margin you are speaking of?

MR. DOLLAR: Well, from your gross profit you have to pay all your overhead.

MR. WHITELEY: That is, your gross you are referring to is the difference between your material cost and your selling price?

MR. DOLLAR: That is right.

MR. WICKWIRE: So that your material cost would be about 47¢?

MR. GRAHAM: Yes.

MR. WICKWIRE: Now, Mr. Graham, this instance you gave us of an outlet across the street that you complain about in Exhibit 2, is that a drug store?

MR. GRAHAM: No, it is not a drug store. It is a ~~type of that handles~~ ~~sandwiches~~ and tobaccos and things like that.

MR. WHITELEY: Excuse me, I think you meant in Exhibit 1 rather than Exhibit 2.

MR. WICKWIRE: Exhibit 1, I am sorry. I referred to it as Exhibit 2. It is Exhibit 1.

MR. DOLLAR: Kingston Road.

MR. GRAHAM: No, that is not a drug store that we had across the road from them. It is a sundries store.

MR. WICKWIRE: How general has this practice become?

MR. GRAHAM: Well, every week since, I would say, the first of March there has been three or four dealers in Ontario having it put on for them, right up to the present

time. Last week there were two dealers that I know of personally in Toronto were putting it on.

MR. DOLLAR: Three.

MR. GRAHAM: Three, was it? There I couldn't say. There may have been lots of others out of town that we have not heard about.

MR. WICKWIRE: And so far in your experience, Mr. Graham, you have only had one dealer who has said "No more, I don't want".

MR. GRAHAM: Yes, that is right.

MR. WHITELEY: Has the offer been repeated at the same dealer or has it so far only occurred the one time?

MR. GRAHAM: No, it has been repeated different years.

MR. WHITELEY: No, at the same dealer?

MR. GRAHAM: At the same dealer. That particular dealer you have, I know that was put on there last year.

MR. WHITELEY: But not during the same year?

MR. GRAHAM: Not to my knowledge, it has not been put on twice during the same year.

MR. DOLLAR: Last year in Weston it was put in the same store twice, right across from where we operate. We have lost track of the dates.

MR. WHITELEY: How far back in time were the successive offers?

MR. DOLLAR: Oh, about three months apart.

THE CHAIRMAN: Is it usually around some holiday when there is apt to be an extra rush of business?

MR. DOLLAR: He does it in the summertime when the business volume is greater than in the wintertime, it is more generally done.

MR. WICKWIRE: And I take it that the same, it is the same person who would do it, say, three or four times a year?

MR. GRAMAM: That is right.

MR. DOLLAR: None of the other photo finishers like the deal, and we all have customers calling up and asking us to do it, and we refuse to do it, and some say "If you are not going to do it, we will have to make a change". However, so far we have been able to talk them out of it, but they are all disturbed about it.

THE CHAIRMAN: Did you say there is only one photo finisher who does this particular deal?

MR. DOLLAR: To my knowledge.

MR. IVAY: Until this other one came out there.

THE CHAIRMAN: Sarnia?

MR. IVAY: From Sarnia, yes. We had an instance about a year ago now. The All-Canada Camera Club started up and they ran large advertisements in the week-end paper and said: "Buy a camera from us, give us your finishing right through and we will supply a new roll of film for a year for this. As long as we do the finishing for every roll you turn in we will give you a new roll". I checked on that on behalf of the Association right away, and in about a month of working on it we checked the film that they were giving and found that it was out-dated. Within a month from the time that they first started, when I went after them on this, they called me up and said they were going to disband this club; the few people that took advantage of the offer they would turn the work over to one of the processors and let him do it and he would give the film, and that is

the same one that is coming through from Sarnia now, but they dropped the All-Canada Camera Club because I went after them on behalf of the Association.

If it had got across Canada the way they had hoped, it was going to mean that other finishers in the photographic business were really going to be out of luck for work and stores were not going to sell cameras or anything else; but having taken action right away when this first advertisement appeared, the All-Canada Camera Club disbanded, that was the end of it.

So when this came up again now, I called the offending finisher and they wanted to know if I was threatening them on this. I said it would have to come before your Commission and I assured him that it was not -- as I said in my presentation this morning, the reason I am acting as Canadian Executive Manager for the Association is that I have no particular brief for anybody. I am out of the photographic business and sort of umpire, as it were, for all of them, but I do like to see and want to try and keep the business clean, because if this is allowed, I mean, in giving free films like this, then what is to stop some of the other processors from giving a tube of tooth paste with every roll of film or as this one that gave a cup and saucer, or anything else. That is my purpose on behalf of the Association, without malice --

MR. WICKWIRE: That brings us to the point concerning which we are here. Is that practice a loss-leader?

MR. IVAY: Well, I submit that the facts that you have of the cost of the film and the amount they

get in there for the processing and printing and what they cost, the cost of the film to them, definitely when you run into 50% almost, I would say it is -- I want your opinion here so that I can advise all of our people: "Don't do this" or "It is okay, you can give away anything you like".

MR. WICKWIRE: I suppose you don't know, Mr. Ivay, what the effect has been on the volume of this particular finisher, the volume of his business?

MR. IVAY: No. Whether it has increased business so much you mean?

MR. WICKWIRE: Yes.

MR. IVAY: Well, no, he would not tell me that. He did say "we did it before" and a few years ago we had -- I think this was the first time he started, was on an Easter Sunday parade at our Sunnyside board walk here, and just ahead of that he ran a big ad saying to take your exposed rolls to one of our dealers, drug store or tobacco store, wherever it is, and with each roll that you bring in we will replace it, we will give you a free roll.

Then it came up last year in a small way, but this year it has been more prevalent, he has gone ahead here in a bigger way. That is why I say we would like to get it stopped or find out if it is all right.

MR. WICKWIRE: Perhaps Mr. Graham can answer this one. The illustration you gave us of the four weeks in May, the last one being \$12.67 for the last week during which this advertisement was on: what has been the effect in this particular outlet on other occasions

when this sort of thing has gone on?

MR. GRAHAM: It was just exactly the same last year, their business dropped down. In fact I think it dropped down less than 50%.

MR. WICKWIRE: It drops down for that week?

MR. GRAHAM: Yes.

MR. WICKWIRE: Then what happens the week after?

MR. GRAHAM: Well, back to normal again.

MR. WICKWIRE: It comes back to normal again?

MR. GRAHAM: Yes, back to normal.

MR. WICKWIRE: So there is no continuing effect? It has a bad effect for the one week, is that it?

MR. GRAHAM: Well, it may have an overall continuing effect. It is pretty hard to say. I think it would. It would be pretty hard to definitely say it would have an overall continuing effect, because their business is, well, it is approximately the same now as it was two or three years ago, whereas in general the whole photographic business has increased.

MR. WICKWIRE: What percent of your total sales would be affected by this practice?

MR. GRAHAM: Oh, I couldn't say.

MR. WICKWIRE: Well, can you say approximately? Does it only affect it slightly?

MR. GRAHAM: I would say it would be 10%.

MR. WICKWIRE: 10% for the week that this practice is running?

MR. GRAHAM: That particular week where the dealer near one of our dealers has it on.

MR. WICKWIRE: Then you pick up again too?

MR. GRAHAM: Yes, but most of these dealers, where they are in competition with this free film, their business has not increased to the extent that other dealers' has where they have not had to compete with that.

As I say, throughout the last four or five years the whole photographic business has increased quite a bit, but these particular dealers that have to put up with this particular type of competition, I don't think their business has increased in proportion to others.

MR. WICKWIRE: Thank you.

MR. FAVREAU: Do you actually know what kind of film, the brand, they are giving away? Are they Canadian or imported?

MR. GRAHAM: No, they are Kodak or Ansco.

MR. FAVREAU: Standard brands?

MR. GRAHAM: Yes.

THE CHAIRMAN: I was a little puzzled and I am not sure whether I had your statement correctly in my mind, about the margin that the finisher works on. I think you said it was 25 to 30% of the gross. I am a little puzzled because it always seems to me that a major element in the price which a finisher would charge is the labour and skill involved in producing the finished article, rather than the paper and materials that go into the required process. I am a little puzzled that there is only a margin of 25 or 30% if that includes all the work done, skill applied, as well as your general overhead, rent, heat, light, and everything

else. I want to be sure.

MR. DOLLAR: Perhaps I did not make myself clear on that. Actually I cannot tell you the secrets of the photo finishing business because I only represent Mercury in the way of calling on the accounts, which I have done all my life. I have called on the drugs all my life, and years ago the firm I was with, they maintained their cost of materials, we will say on a dollar's worth of photo finishing, trying to explain it that way, on a dollar's worth of photo finishing their gross profit was 30¢, and their cost of materials would be the other 70.

Now, out of that gross profit it might be only their own wages to be taken out of that. I don't know, I can't tell you, but it has always been my understanding that the gross profit in the photo finishing trade was 25 to 30%, and not being an actual photo finisher or member of a firm, I cannot go any further.

THE CHAIRMAN: What I was getting at, it seemed to me there was a marked difference between that industry as compared with certain types of retailing where you merely handle the goods in and out of the shop or store and in which in some instances the mark-up is about the same as you are suggesting now for the photo finishers. I would have thought that what you could call the labour element in your total price would be much higher than in any ordinary retailing business.

MR. GRAHAM: Actually it varies somewhat according to the volume you do. I mean, for instance, we may have a wet week-end, but we still have all our employees

there, we still have to pay them, and your business would be down possibly 60% to what they would be if it were a nice, bright week-end.

THE CHAIRMAN: what I am getting at is the wages, are the wages of the men employed in the shop included in the 25 or 30% mark-up, or are your gross profits computed after taking them into account?

MR. GRAHAM: After the wages and materials.

THE CHAIRMAN: wages and materials included as part of the 70.

MR. GRAHAM: Wages and materials.

THE CHAIRMAN: That is what was puzzling me, because it seemed to me in your industry particularly wages would be a very large element in the total picture.

MR. GRAHAM: Yes, they are.

MR. DOLLAR: What I meant, that figure 25 or 30% might include the heads of the firm in it.

THE CHAIRMAN: Yes, but not wages of the people who were actually doing the work.

MR. DOLLAR: Not the wages.

THE CHAIRMAN: That clears it up. Otherwise I couldn't see how your overhead could be met at all.

MR. WHITELEY: Mr. Ivay, it would appear that the two exhibits you have filed with the Commission differ substantially as to the nature of the offer made. In Exhibit 1 the offer is replacement of a developed roll of film by a fresh roll for a limited period. In the second case the supply of film is linked with a purchase of a camera and extends for a period of a year. I presume it is something similar to

the advertisement some sellers of washing machines put out where they supply you with a year's supply of soap.

MR. IVAY: Of course, there with the washing machine that is the end; whereas on the replacement of the roll of film all the time, it is a new product going out and they are confining the developing and printing of that roll to their own plant, as they say in Exhibit 2, they have to bring it back there for finishing at regular prices. That brings it back into that store for that reason.

MR. WHITELEY: Yes, but that continues over such a lengthy period one would hardly think the seller would consider giving such an offer unless he was making what was a fair return in price.

MR. GRAHAM: On that particular instance there, that particular finisher, he brought in a cheap film from Europe, and that is the reason he can do that. This was old, out-dated film I understand he brought in for about a nickel a roll.

MR. WHITELEY: In other words he is cutting his costs and perhaps making a profit.

MR. GRAHAM: With that out-dated film he possibly might.

MR. WHITELEY: The two cases are clearly distinguishable.

MR. GRAHAM: Yes, they are.

MR. WHITELEY: The second case in Sarnia does not really bear on your problem at all.

MR. GRAHAM: No, not as much.

MR. WHITELEY: If he is selling something on which he is making a profit.

MR. GRAHAM: It is possible. At the same time he is giving something to the public which is just no good.

MR. WHITELEY: Another question I felt --

MR. IVAY: I brought that out. It was not mentioned in the first instance at all but it came in since from one of our drug members in Sarnia sent that ad to me with a story saying, how were they going to compete with business like that and signed it "a fellow member" and so on.

MR. WHITELEY: It seems to me from the explanation we have had now that it hardly comes within the field of inquiry with which we are dealing today.

MR. IVAY: No, if the presentation to the Commission is based on Exhibit 1, but I did want to file that second one with you too from Sarnia on behalf of our members so that we had presented it to you, taken action on it.

MR. WHITELEY: On the first example what would be the difference in effect if this photo finisher instead of giving a free roll of film, reduced his price by 28¢?

MR. GRAHAM: It would just amount to this that everybody else would have to do it too, the same as we are going to have to give a roll of film away if he continues.

MR. WHITELEY: In other words he is not linking actually any other sale to the offer he makes; he is not leading people to buy something else by giving a special bargain on one item in order to encourage them to buy something else on which he will make a profit. In effect he is reducing his price for that period of this sale?

MR. GRAHAM: Actually he is getting people into this particular drug store so that he can get the dealer away from the other finisher. I mean, for instance, he will approach a drug store and say, "I will give a free roll of film away with every roll your customers bring in". That way you get a lot more customers into your store.

MR. WHITELEY: How would you differ that if he came into the dealer and said, "Next week I will reduce my price to you 28¢ and I hope you will reduce your price to the customer 28¢. That way we may draw a lot more people to do their finishing with you and with me". Would there be any difference?

MR. GRAHAM: I don't know.

MR. IVAY: I would think that the offer of a roll of film, some tangible item free, is going to bring them in more than a discount, if you give a lesser price for the developing and printing. Take an 8 exposure roll at 50¢. If he said "we will give you one print of each and so on for each roll" that would not get equally as much attention or people into the store as they would get from the

offer of a roll of film.

MR. WHITELEY: You think the public is more conscious of a material bargain than they are of a cash bargain?

MR. IVAY: That is my point, and I know I take a lot of pictures and if I had to go out and buy a roll of film every time it would be a tremendous difference.

MR. WHITELEY: Of course this offer here is so limited that you could not develop many rolls of film in the time that it applies.

MR. IVAY: Well, in the particular instance there, there was a holiday week-end and it would be much more than mid-week sales, but I think that each time it is put out that the date given to a store takes in a week-end in the hope that they will get more rolls brought in. They have a banner in front of the store saying just when it is on.

MR. WHITELEY: What I mean is that a person taking photographs over the week-end is not likely to finish a roll on Saturday and rush out on a Sunday in order to get a free roll back on Monday.

MR. IVAY: Well, shall we tell you, you have a lot of beauty spots here. My lad went out yesterday and just shot a roll just during the day. I could not find anything myself I wanted to take pictures of, but he did. He took a roll yesterday, so that there is quite a bit.

A week ago, last Monday on the holiday I

was over to the Rock Garden in Hamilton and I would say there were at least fifty cameras operating in the Rock Garden last Monday afternoon, so where there is something to take a picture of people do take a lot of pictures.

MR. WHITELEY: What I am getting at, you cannot stock up beforehand.

MR. IVAY: No, you just get the replenishment of what you use, that is all, but I think they would go -- you know, bring their film to that store.

There is no malice on my part, I am not against this man, I am not against Mr. Granam or Mercury or any of them. I am an umpire as it were and I am looking for information and consequently there are questions that they can answer that I will have to keep quiet on.

MR. WHITELEY: I think you understand that normally one of the main complaints against the loss-leader practice is in that in some way it is deceptive to the public by offering them a bargain on the one hand in the hopes that the seller will recoup his cost to a much greater extent by selling something else. Now, there does not appear to be anything of that nature in this type of offer.

MR. IVAY: Except that he will continue selling more work, more finishing, and that after the offer is over when they bring the next roll in they are not going to get back to that dealer where they got the free roll, they are not going

to get a free one again.

MR. WHITELEY: The circular makes it clear, it says "Good on dates shown". There is no deception in that.

MR. IVAY: No, but they have won over a new dealer and a new customer for the dealer by having a special at that time. That is what they hope to get out of it. It is not just to give a free roll of film away for that one roll, but they hope to continue getting the business by having put it through that dealer for the time being.

And of course the way the film companies advertise the film business, it is a free walk-in your store for business: that they come in to buy a film and buy something else while they are there. They bring it in for developing and printing and buy something else, and then when they come in to get it again they buy again. So that there are three times they come into a store in connection with the one roll of film. If they have that deal on they definitely are going to go in there three times and the drug store is going to take advantage of it and the customer is going to come in to do his other purchasing while he is there.

MR. DOLLAR: The question about the people hurrying up taking their pictures to get in on this deal: about 75% of the films come in to a finishing on Monday, Tuesday, Wednesday of the week.

MR. WHITELEY: I can see that. What I meant

was it was unlikely to be repeat sales in the period of the offer. However, I don't know what time --

MR. DOLLAR: If the people like the work they do, they will keep going back to that store and leave the store where they had been.

MR. WHITELEY: Yes, at the regular prices.

MR. DOLLAR: Yes.

MR. WHITELEY: What sort of service would be provided? Would they be returned the same day?

MR. DOLLAR: Twenty-four hours.

THE CHAIRMAN: That is the regular normal service?

MR. DOLLAR: That is the normal service.

THE CHAIRMAN: Any member of the delegation wish to make any further comments?

MR. DOLLAR: Well, a couple of instances, where we have lost new stores, stores that were just opening up, where they had agreed to do business and then our opposition would hear about it and they would go and say "We will give you a free film deal" and they will call up and say "Will you give us a free film deal?" We say "No". "All right, we will do business with the other company". In that way we have lost just within this last six weeks two new stores.

MR. WICKWIRE: May I ask Mr. Dollar if you have lost any of your old customers?

MR. IVAY: Mr. Graham spoke of losing one at Allandale.

MR. WICKWIRE: I know, that is as far as Greyhound is concerned.

MR. DOLLAR: I actually cannot recall right now a store that we have lost to this opposition through that deal that we had been doing business with.

MR. WICKWIRE: And has Mercury's experience been the same as Greyhound's, that is that profit may drop down during the week which this advertisement appears and then pick up again?

MR. DOLLAR: Merchants have complained to us that their photo finishing went down.

MR. WICKWIRE: Went down during the period that this advertisement appeared?

MR. DOLLAR: And it would take a matter of, I would say, possibly a month for it to get all these customers back, and the only reason they get them back is if they were not satisfied with the work that they were getting.

MR. WICKWIRE: It has come back, Mr. Dollar, that is the point.

MR. DOLLAR: A lot of it. I would not say it all came back.

THE CHAIRMAN: If there are no other questions or comments that will bring the presentation to an end. Thank you, gentlemen.

MR. IVAY: Thank you kindly, sir.

Delegation from: DRUG TRADING COMPANY LIMITED.

Comprising: Mr. R. Cary,
General Manager.

Mr. J. Gould,
President.

Mr. K. Legge,
Assistant General Manager.

THE CHAIRMAN: The next group that desire to appear this morning are representing Drug Trading Company Limited. I might say that the brief from this company has only just reached us this morning, and I think it would be advantageous probably and save some time if we had an adjournment at this time for about half an hour while we read the brief and counsel read it. That will facilitate any discussion which may arise out of the presentation of the brief. I think we had better do that as the brief has only reached us this morning instead of being available ahead of time as we hoped.

It is now about five minutes to eleven. We will recess until 11.25 and I think that probably will give us time to get on with this brief this morning.

---Recess from 10.55 a.m. to 11.25 a.m.

THE CHAIRMAN: The hearing will resume, gentlemen. The next brief to be presented will be

presented on behalf of the Drug Trading Company Limited. Those who are appearing for the Drug Trading Company Limited might come forward and find seats at the table, gentlemen. Would the delegates presenting the brief please indicate that fact and their names.

MR. CARY: My name is R. Cary. This is Mr. J. C. Gould, President of our company who is also a retail pharmacist; and Mr. K. C. Legge who is my assistant.

THE CHAIRMAN: You are the general manager?

MR. CARY: I am the general manager.

THE CHAIRMAN: The normal procedure which I think might be followed in this case, is first to read the brief and then to make any comments on it that you desire to make, and then any comments which members of the delegation may wish to add can be made and following that questions and a general discussion.

MR. CARY: All right. You don't want us to comment as I read through?

THE CHAIRMAN: As you like. You can make your comments as you go along that way if you prefer.

MR. CARY: Thank you very much. First, our apologies for not having the brief ready before this morning. We regret that although we thought it was fairly simple and it would not be too much.

"To The Chairman and Members

"of the Restrictive Trade Practices

"Commission.

"Gentlemen:

"We fully recognize the immensity and
"complexity of the problem of analyzing present
"trade practices and assessing the possibilities
"inherent in our structure of distribution
"for the development of practices harmful to
"the economy as a whole and to substantial groups
"within the economy".

And we are sincere when we say that we recognize the
immensity of that problem.

"The Commission has, in part, undertaken
"a comparison of the prices charged by a group
"of chain stores and by grocery departments
"of department stores, all of which employed
"'leaders' and 'specials' extensively in their
"advertising, with the prices charged by a
"group of independent grocers for the same
"items. These figures published on this ob-
"viously very limited survey do not appear to
"support the view that those stores advertis-
"ing 'leaders' charge higher prices on other
"items in their stock to compensate for the
"losses that are suffered on the leaders.

"These findings certainly differ from
"those uncovered in the exhaustive investi-
"gation into price spreads conducted in 1934-
"35, and reported by the Stevens Commission.
"At that time the opposite was found to be
"the case.

"We submit that the very existence
"of the Restrictive Trade Practices Commis-
"sion, set up for the purpose of investigating
"such practices as 'price juggling' or 'loss
"leadering', would in itself be a deterrent
"to these large organizations following such
"practices in a way that could be readily
"uncovered".

We think further that the statements made in the House
in late 1951 should certainly be considered in any
report or any report of findings. There were some
statements made that Members of the House would not
stand for any loss-leadering, and I think that
part should be taken into account in your considera-
tions.

"We submit that these figures do not
"offer a sound basis for concluding that
"'profit padding' on goods other than specials
"is not and cannot be practised.

"The lines selected for comparison
"are admittedly representative grocery-store
"products. By and large, they are lines that
"are frequently purchased by the consumer
"and lines that are either easily identi-
"fiable by brand names and grades or easily
"compared by the average consumer. It would
"be risky indeed for an organization that
"wished to 'jack up' its margins on some
"lines to get away with it on such

"merchandise.

"However, in the field at present covered
"by the major food operators, there are many
"lines in which it is very difficult for the
"consumer to compare values, through lack
"of grading, the inability of the average
"buyer to judge qualities, the impossibility
"of directly comparing the items offered by
"various outlets before purchasing, etc.
"While not necessarily claiming that this
"'profit padding' is now being done, we submit
"that it is quite possible on numerous lines
"apart from those surveyed -- such as many
"items in the fields of soft goods, hardware
"items, china and glassware, meats, fresh
"fruits and vegetables, etc. Such lines,
"while possibly not producing the volume of
"sales of those used in the comparison, may
"well be very substantial contributors to gross
"profit.

"The possibilities of this practice
"being followed in other retail fields is,
"perhaps, considerably greater than in the
"grocery field. We submit that among those
"trades open to such practice are those
"dealing in furniture, clothing and fabrics,
"auto and electrical repairs and service,
"plumbing and heating supplies, drug
"sundries, etc.

"As long as 'loss leadering' ..."

And we have inserted the words "in our industry" because we think there is considerable trouble from loss-leadering in other industries, so that should read:

"As long as 'loss leadering' in our
"industry does not extend beyond the degree
"now evident across Canada generally, there
"is little to fear of this practice. The
"time when such profit padding can be expected
"to really delude the consumer is when viru-
"lent price cutting has reached such competitive
"proportions that the retailers so engaged
"are virtually forced into it to bolster
"their sagging gross margins in order to
"cover expenses.

"We are naturally concerned about the
"conditions in our own field, the drug trade.
"Extensive surveys have already indicated that
"net profits in drug stores have been cut
"substantially in 1953. However, we do not
"suggest that the small amount of price-
"cutting in the merchandise sold by drug
"stores has been responsible for this; rather
"it has been an increase in cost of doing
"business more than a reduction in gross
"profits.

"However, the drug trade is particu-
"larly vulnerable today to serious inroads

"by loss leadering'; not so much by those
"within but by those outside the drug trade,
"who might wish to use nationally known
"'drug store' products of established merit
"and value as leaders.

"In Toronto, before the turn of the
"century, department stores began using popu-
"lar drug and cosmetic lines as cut-price
"items to bring people into their stores.
"The practice by department stores then and
"through to the present has been frequently
"to use drug products to 'bring them in'.
"Often their specials are not sold on telephone
"orders -- obviously their interest is not in
"the sale of the items advertised so much as
"in what can be sold to the customer who enters
"the store to buy the specials.

"The department stores, then as now,
"could be very little concerned about sacrifici-
"ing their margins on such lines, for they
"bulk very small in their over-all volume.
"The same applies today to the food stores
"with their 'Health and Beauty Departments'.
"With no particular intent to injure the
"drug trade, some of these giant competitors
"in the department store or grocery chain
"field could easily slip into a situation
"of violent competitive price cutting on
"this kind of merchandise. With pernap only

"2% of their volume on these items they
 "could demoralize the drug trade by price-
 "cutting on the well-known brands in this
 "department, which account for a very large
 "percentage of the average drug store's
 "sales".

You will see the foot-note shows that around 54% of the
 drug store's sales are in those nationally-known items.

---Foot-note to brief:

"According to DRUG TOPICS' 6th Annual Survey
 "of Consumer Spending (U.S.), drug stores
 "sales in 1952 comprised 17.60% of packaged
 "medication (exclusive of prescriptions),
 "14.78% of confectionery and tobacco, and
 "22.32% of feminine needs, first aid needs,
 "baby needs, home sanitation, oral hygiene,
 "hair products, shaving products, hand
 "products, cosmetics and other toiletries --
 "all of which lines are sold to varying
 "extents in the major food chains and depart-
 "ment stores".

"Popular nationally advertised items in
 "these classifications, such as salines, hair
 "preparations, tooth pastes, etc. are ideally
 "suited to use as 'price leaders'. So the
 "other outlets, without seriously hurting
 "their over-all gross margin, could destroy
 "the gross profits of the druggist or destroy

"his sales volume -- for he must meet the
"prices to hold his sales in the long run --
"and such merchandise bulks very largely in
"his total sales.

"Although such merchandise as Kleenex,
"Modess and Pablum cannot now be regarded
"particularly as drug store lines, they have
"for years bulked large in the volume of
"the average drug store. At the manufacturers'
"suggested prices, the spread is less than
"the druggists require on their over-all sales.
"Yet these lines have been advertised to the
"public by the food chains at prices recently
"that are in some cases a trifle above the
"druggists' cost, but in one case (Pablum,
"16 oz. @ 31¢ - A. & P. Stores, April 29,
"1954) below the druggists' lowest laid down
"cost.

"This problem is not by any means one
"facing the retail drug trade alone, but
"in the past it has perhaps had its most
"severe impact on the drug trade.

Closely akin to this is the practice
"of certain food chains recently of offering
"some of the stock-in-trade of the hardware
"and electrical appliance outlets at prices
"substantially below normal with certain
"totals of cash register slips, etc. This
"has undoubtedly tended to create the

"impression in the minds of the public that
"the dealers in the line so used as premiums
"are taking exorbitant profits.

"Members of trades that are providing
"useful services for their communities
"should, we suggest, have some measure of
"protection against the demoralization
"caused by this type of competition.

"One plan advanced as a possible safe-
"guard against the evils of the 'loss leader'
"involved a minimum percentage mark-up by
"the retailer on his own cost of merchandise.
"Any formula which would fix a retailer's
"'floor' price at any fixed ratio to his
"own laid down cost would forever place him
"at an advantage or a disadvantage over his
"competitors, depending whether he purchased
"at a lower or higher price. The best buyer
"(by virtue of volume purchase or any other
"reason) would thus have a 'floor' price
"that could not be met by any competitor
"regardless of efficiency of operation and
"any other factors. The large operators
"would have a competitive advantage over
"small independents that would tend toward
"monopolistic control".

We cannot emphasize that too strongly. It was suggested
at the time the Commission was meeting in Ottawa that
it would be possible to say that a firm can sell

at a percentage above their laid-down cost and that would put a person who had to buy at a higher price at a terrible disadvantage with their competitors. We are very anxious to make that point, that as long as there are varying prices at which people buy it would certainly make it that the independent who buys at that higher price would not be able to ever meet the chain store competition.

THE CHAIRMAN: There is just a question in my mind there. The suggested minimum mark-up usually runs around 5 or 6%. If the retailer who, as you suggest, would have to buy at a higher price than others, was to meet the competition of somebody who was selling a lot more and selling at a mark-up of 5 or 6%, in order to meet that competition he would sell it at an actual loss.

MR. CARY: He did and that was one of the reasons that our I.D.A. plan of advertising was started back 21 years ago and we did advertise many items at below cost. It meant that the independent retailer sold them below his cost to meet that advertised price of his large competitors.

THE CHAIRMAN: And you wish to preserve the right of the retailer to sell below cost?

MR. CARY: We certainly do, if to meet that competition. If you don't you are putting the independent at a very serious disadvantage.

"The problem arises, too, under any

"such plan as to how to divide the chain

"organization's over-all costs between the
 "wholesale and retail function so as to
 "establish retail 'floors'.

"If any such 'floor' were established,
 "and permission were given to operators to
 "go below their own 'floors' to meet competi-
 "tion, the situation would become quite im-
 "possible in regard to establishing proof
 "of 'who started it' -- and of course, in
 "any investigations of infractions there
 "would be great difficulty in securing the
 "facts as to operators' costs of specific
 "items.

"One of the evils inherent in a system
 "that does not allow a manufacturer to estab-
 "lish and protect his price structure is the
 "tendency of the public to hold off buying when
 "competitive price cutting gets under way.
 "While not of great significance in low
 "priced, rapidly consumed lines, in the case
 "of more costly items such as major and even
 "minor household appliances, tires, etc., the
 "buying public, by waiting in hope of further
 "price cuts, will refrain from use of such
 "merchandise, thereby reducing the consump-
 "tion, slowing down demand with its result-
 "ant losses in production and wages in the
 "manufacturing and distributive channels".

I don't think we can over-emphasize that danger because

it is a present danger and I don't think there is anybody in the room that cannot think of an excuse or rather an experience where somebody has held off buying to get a lower price.

I have instances in my own family where they have held off to see what the lowest price is that they could get on a certain washing machine. I think that is a point that cannot be over-emphasized. It does undermine consumer confidence.

THE CHAIRMAN: Don't you think it sometimes works the other way, that because the price has been reduced the people rush in to buy that might not have bought?

MR. CARY: I don't think it ever does. We have in our own company, not this year, but we have held off buying cars. We normally buy at the first of the year and we have held off longer than that time in the hope that we will get lower prices, and we certainly have got good prices, but we don't know whether if we had held off longer, by the ads that appeared in Saturday Night's paper, for instance, whether if we held off a few months longer we would have got even better.

THE CHAIRMAN: But unless a great many buy when these reduced prices are put on, you would think those advertisers would soon be in bad shape.

MR. CARY: I think those advertisers may, as one group may do more business just at that time, but in general they certainly won't. I think it

tends to reduce the consumption very definitely.

THE CHAIRMAN: You mean they may buy from the source that are offering substantial price cuts?

MR. CARY: That store may do more than --

THE CHAIRMAN: And hold up more from the other store?

MR. CARY: I think so.

MR. WHITELEY: We have had the other objections, I think the argument appears in some briefs, that buying is anticipated and volume of purchase is made at one period that might have been extended over quite a number of months.

MR. CARY: I can give you a lot of instances, personal instances. You think for yourself, I think every one of us can pretty well do it. I have two daughters who have set up homes, and I know that one at least was going to buy a washing machine last Fall and held off for at least six months because of the unrest and unsteady prices and finally bought --

THE CHAIRMAN: At a lower price than she would have got it at first?

MR. CARY: No, I don't think she did, I think she paid about the same, but it was at a cut-rate store. She went to one of the department stores to look them all over and pick out the one she wanted and bought it from a cut-rate store.

'Between prosperity and recession',
"said Carroll M. Shanks, president of the
"Prudential Insurance Co. of America, at

"a recent meeting of Canadian businessmen,
"stands only one real dyke. That dyke is
"consumer confidence. Undermine it and
"consumption falls, production declines and
"jobs start to evaporate'. We submit that
"confidence is threatened when price cutting
"is prevalent, due to the consumer's fear
"that the manufacturer or distributor may
"be marketing an inferior product, or to an
"uncertainty that the product may not be
"available cheaper somewhere else 'the next
"day'. The distributor, too, cannot confi-
"dently operate his business where prices
"are uncontrolled, for the mark-up he must
"take to remain competitive cannot be reason-
"ably predicted. He tends to operate along
"lines of extreme caution rather than to
"take the risks inherent in progressive
"merchandising, and also inherent in a
"dynamic economy such as has been ours in
"Canada in recent years.

"Without for one moment questioning
"the methods of acquiring and analyzing
"the facts presented in the Commission's
"published booklet, we strongly feel that
"if all the facts could be found and all
"the motives known, overwhelming argu-
"ments would present themselves to an im-
"partial fact-finding board in favour of

"permissive resale price maintenance. This
"to our thinking, presents the only satis-
"factory answer to the 'loss leader' from
"the standpoint of the manufacturer and
"distributor and we are entirely convinced
"that resale price maintenance is not con-
"trary to the public interest".

THE CHAIRMAN: Do you wish to add any comments
at this time, Mr. Cary, yourself?

MR. CARY: No. I suppose you all saw what Mr.
Burton said on Saturday. Mr. Burton said that the
resale price law is a threat to retailers. Did you
see that article? Perhaps we should file that so that
the Commission --

THE CHAIRMAN: It has been called to our atten-
tion.

MR. CARY: I think that is all I had.

THE CHAIRMAN: Well, if you wish to file it in
support of your brief, we will be glad to have it.
Just as you like yourself. If you would bring it
here we will mark this as an exhibit. We had adopted
that practice for extra material. This is a news-
paper clipping.

MR. CARY: That was in the Globe and Mail
on Saturday.

THE CHAIRMAN: Taken from the Toronto Globe
and Mail of Saturday, May 29th.

---EXHIBIT T-3: Clipping from Globe and Mail of
Saturday, May 29th, 1954, containing
article by Mr. Burton on resale
price law.

THE CHAIRMAN: Does any other member of the delegation wish to make any observations or comments at this time?

MR. GOULD: No observations, Mr. Chairman. If there are any questions that we might be able to answer, we would be glad to do so.

THE CHAIRMAN: Mr. Legge?

MR. LEGGE: No sir, no remarks at the moment.

THE CHAIRMAN: Do counsel wish to ask any questions regarding this brief?

MR. WICKWIRE: Just a few questions, Mr. Chairman. Mr. Cary, on page 1 of your submission you draw a comparison between the information found by the Director of Investigation and that found by the Stevens Commission in 1934 and 1935, and I think you point out that they arrive at opposite results.

MR. CARY: Yes, at that time the Stevens Report certain stated that there were excessive profits made on lines other than those advertised, other than those nationally advertised.

MR. WICKWIRE: At that time.

MR. CARY: At that time, that is right.

MR. WICKWIRE: Now, are you familiar with the report of the investigation by the Federal Trade Commission in 1944 and 1945?

MR. CARY: No.

MR. WICKWIRE: I suggest to you that that report --

MR. CARY: 1944 and 1945, again you are in a period of shortages and allocations.

MR. WICKWIRE: Would indicate that it is in conformity with the information that the Director recently compiled. On page 2 you suggest that the average buyer was unable to judge qualities. Now, can you be a little more explicit on that, Mr. Cary? We have some information, it has been suggested to us, that the average buyer is a pretty wary person and that he does, both he and she do know values.

THE CHAIRMAN: Particularly she.

MR. WICKWIRE: Particularly the she side, the distaff side. What has been your experience in that?

MR. CARY: Well, I think that you had better get somebody better able to judge than I, because I know that if I go in to buy things I can never tell. The only way I think that a thing is better is because it may be a higher price. But we have not anything definite on that. We are saying that it is quite possible and I don't think any person in this world is in a position to judge all standards of all merchandise.

MR. WICKWIRE: Well, I don't say all standards but for general purposes is not a housewife pretty astute at understanding quality and values?

MR. CARY: Well, you are not going to trap me into saying that the housewife is not.

MR. WICKWIRE: Well, I am just wondering what

you say the inability of the average buyer to judge qualities is based on, because, as I say, it has been suggested to us that most people are fairly astute.

MR. CARY: Well, I think we would just let it go as we say, then. I don't think they are. I don't think the average person is able to judge all standards. They may be able to judge certain a certain brand that they like, that they have a preference for, but that does not say that that is a better brand, and I am quite sure --

MR. WICKWIRE: You mentioned yourself in your own firm you were holding up buying cars.

MR. CARY: That is right.

MR. WICKWIRE: You must know something about cars?

MR. CARY: That is right.

MR. WICKWIRE: In order to get a price.

MR. CARY: That is right, but I can tell you that we took three different brands of cars to get the lowest prices in various fields, and again you are talking of brands.

MR. WICKWIRE: You yourself would know prices of those cars or the suggested prices of course.

MR. CARY: That is right. We are saying that with national brands it would be very hard to fool the public, but there are a lot of things sold in all establishments that are not national brands. I think meat, for one thing, I don't have to tell you gentlemen that meat can vary greatly.

MR. WICKWIRE: May I ask, who does the carving in your household?

MR. CARY: I do, and I can tell when my wife buys it from our own butcher or buys it from a chain store.

MR. WICKWIRE: I suggest if you made the purchases of the meat you would probably be able to tell the quality.

MR. CARY: No, I am not that smart.

MR. WICKWIRE: Why is it easier to judge the quality of a nationally advertised brand than it is to judge others?

MR. CARY: I didn't say it was easier to judge quality. I said preference, I think: If you have a preference for a nationally advertised brand, if you have a certain shaving cream and likely your tooth paste, you know the price of that very well. That is preference. I did not say quality. I think they have to be good or they would not be nationally advertised.

MR. WICKWIRE: I suppose that gets down to this, that if I happen to like a particular shaving cream, I will always buy it?

MR. CARY: That is right.

MR. WICKWIRE: Maybe because it is nationally advertised, maybe because I like it.

MR. CARY: That is right.

MR. WICKWIRE: Or that the quality of it suits me.

MR. CARY: That is right, and you might be brought into a store and buy that nationally advertised brand at a cut price and buy a handkerchief about which you don't know, you don't buy a nationally advertised handkerchief.

MR. WICKWIRE: No, I don't know offhand that there are such things.

MR. CARY: Well, there are.

MR. WICKWIRE: But I can tell the quality of a handkerchief.

MR. CARY: Well, you are good if you can, you are better than I again. I am not going to argue with you on that.

MR. WICKWIRE: Well, a good Irish linen handkerchief is quite a different article.

MR. CARY: I would like to have a linen man here and get you to tell him what is best.

MR. WICKWIRE: I don't know what is best, but I can tell the quality of a good linen handkerchief from a lot of lines.

MR. CARY: Well, before we get out of town we will see if we can get somebody.

MR. WICKWIRE: Fine. You say you cannot?

MR. CARY: No, I cannot.

MR. WICKWIRE: Any old handkerchief would do you?

MR. CARY: No, I don't say that, but I say I cannot tell the value of a handkerchief by looking at it.

MR. WICKWIRE: But you can tell the quality?

MR. CARY: No, not to the full extent.

MR. WICKWIRE: You cannot. Now, you suggest also on page 2 that the time when, as you call it, profit padding can be expected really to delude the consumer is when virulent price cutting has reached such competitive proportions, and so on, and I take it that you suggest from that that the only way to stop that is the restoration of resale price maintenance?

MR. CARY: That is what we say, that is the only thing.

MR. WICKWIRE: You are concerned, you say, about the conditions in your own field?

MR. CARY: We feel we are particularly vulnerable, yes.

MR. WICKWIRE: Well, is that because of inroads made by other outlets such as the chain and department stores?

MR. CARY: We were vulnerable back in the days when the chain grocery store did not handle any health and beauty items. We were vulnerable because shaving cream, tooth pastes and face creams that are nationally advertised, a terrific amount of money has been spent in advertising those health and beauty items and the public get to know them, so they make an ideal loss-leader. I think that if a store advertised some of those tooth pastes at a terrific cut today, they would bring people into the store.

MR. WICKWIRE: Right here, Mr. Cary, may I ask you what your definition of a loss-leader is?

MR. CARY: No, you are not going to trap me on that either, because there is not any definition of loss-leader --

MR. WICKWIRE: I am not trying to trap anybody. I am trying to get information.

MR. CARY: Well, it has to be somebody -- I have been trying for 25 years and I have not been able to get a definition, so it will have to be somebody much smarter than I give that definition.

MR. WICKWIRE: You state that these goods that these druggists handle, were subject to the practice of loss-leader or loss-leadering. Now, do you suggest that the goods may be sold below the usual mark-up and that they are therefore a loss-leader?

MR. CARY: Well, we just gave you an instance of Pabulum being sold below the price that the retail druggist pays for it, below his invoice price. I would say that is a loss-leader certainly, or it is a cut price.

MR. WICKWIRE: That is by A. & P.?

MR. CARY: Yes.

MR. WICKWIRE: Do you know what the cost to A. & P. was?

MR. CARY: Well, I am pretty sure it is 30 1/6¢, I believe that is correct, but again you folks are in a better position to find that out.

MR. WICKWIRE: The thing I am suggesting to you, Mr. Cary, is that it may not have been sold at a loss by A. & P.

MR. CARY: All right, let us say a cut price then, if that will make you happier, let us say a cut price, at a deep-cut price. That still is going --

MR. WICKWIRE: I am very happy, Mr. Cary, and all I am looking for is information. Do you suggest that any article, particularly in the drug trade, which is sold below the usual price, is a loss-leader?

MR. CARY: Well, I think perhaps you have a letter on file from the Canadian Pharmaceutical Association. I believe they define loss-leader in their estimation, and they would be better able to define that than I.

MR. WICKWIRE: Well, is your suggestion as contained in your brief, that a manufacturer should be able to get the resale maintenance price?

Mr. CARY: That is right.

MR. WICKWIRE: On his products.

MR. CARY: And if you sell below the manufacturer's suggested price, I think you could very well say you are cut-pricing or loss-leadering.

MR. WICKWIRE: Or loss-leadering.

MR. CARY: Yes.

MR. WICKWIRE: Then you use the same as symbolic?

MR. CARY: If you want to say that, yes.

MR. WICKWIRE: Well, I am asking you if you say that?

MR. CARY: Well, I have told you that I have not any definition of loss-leader. I am not satisfied with any definition I have ever seen of loss-leader because there are too many definitions.

MR. FAVREAU: Let us not call it loss-leader. According to your brief would you call any selling below the maintained price or suggested price rather, unethical?

MR. CARY: Yes, we are saying it is cut-pricing anyway, it is cut-price advertising, let us say.

MR. FAVREAU: And you identify it with an unethical practice?

MR. CARY: Yes. Perhaps that is a little stronger than we say, unethical.

MR. FAVREAU: Or improper.

MR. CARY: It is a detrimental practice.

MR. WICKWIRE: All right, detrimental practice as far as the trade is concerned?

MR. CARY: Yes.

MR. WICKWIRE: What about the customer?

MR. CARY: I think eventually it will be to their detriment too, because anything that is going to undermine the economy of the country is going to affect the customer.

MR. WICKWIRE: Well, will you tell me in 1,

2, 3 order how when a customer can purchase a given article at less than the manufacturer's suggested price, that undermines the economy of the country?

MR. CARY: Yes, I will say that you only have to go back to the early 1930's when price-cutting and price-juggling was prevalent and your Stevens Report will tell you enough, how firms were actually closing down. You have, I know, on your records, the story of the Ingersol watch where the Ingersol people went out of business through cut-pricing. Now, naturally if an item is a loss-leader it eventually affects the sale of that item.

MR. WICKWIRE: Do you suggest that the lowering of prices or cutting of prices in the early 1930's was the cause of the depression?

MR. CARY: I certainly do, yes, largely.

MR. WICKWIRE: You suggested in your brief that your organization would look with disfavour on the setting of any floor prices.

MR. CARY: Yes.

MR. WICKWIRE: You are aware, I take it, that in several of the States in the United States they do set floor prices?

MR. CARY: Yes.

MR. WICKWIRE: And it has not worked out too satisfactorily.

MR. CARY: Well, I believe that if everybody bought at the same price it would be a safeguard,

but as long as people buy at different prices, as long as various organizations buy at different prices -- and I am glad to see that you have recognized that in your investigation there because that was a hard point for us to get over to the members of the Committee, there are various prices at which various types of trade buy.

MR. WICKWIRE: And there are also various prices at which people sell.

MR. CARY: That is right.

MR. WICKWIRE: Depending on cost?

MR. CARY: That is right, but I still say if everybody bought at a certain price you would have a basis for establishing a percentage above that amount.

MR. WICKWIRE: You would still have certain cost ratios, "wouldn't you, of doing business?

MR. CARY: Yes, but they would not be nearly as severe.

MR. WICKWIRE: Now, I have to ask you one or two questions about what you say is the tendency of the public to hold off buying when competitive price-cutting gets under way. There is a good deal of evidence, is there not, that it is just the converse of that, Mr. Cary?

MR. CARY: I don't know whether there is. I haven't seen evidence, because you folks -- I only know what did happen in the past and what I am quite sure will happen again.

MR. WICKWIRE: Well, I have here a statement from today's Globe and Mail concerning T.V. set sales showing a big gain in the first four months. April, the production was 29,631 sets of which 25,868 were sold having a value of \$9,055,000. Sales in April 1953 were 20,307 sets having a value of \$9,250,000.

MR. CARY: Well, you are surely not going to compare a growing industry like the T.V. with new stations opening all over the place, you are not going to compare that. You can take the automobile industry and I take it the figures are just the opposite.

MR. WICKWIRE: Is that because there are perhaps too many of the manufacturers making too many?

MR. CARY: I am not going to get into that, but my idea, my opinion is that it is because of the cut-pricing that is aggravating the situation, yes.

MR. WICKWIRE: Have you any figures in any particular industry?

MR. CARY: It is not our business to get those figures; it would be too hard for us to get them. I think you will have some submitted to you before you are through, but I haven't any. I have figures showing our own sales of Pablum are down considerably, but I would not offer those to you because I don't think they are justified because there are other reasons.

MR. WICKWIRE: Yes, because Paalum is being sold --

MR. CARY: In groceries.

MR. WICKWIRE: In groceries rather than drug stores.

MR. CARY: Yes, although a year ago it was too but still our sales are down.

MR. WICKWIRE: There has been some evidence that cigarettes have been cut.

MR. CARY: That is right.

MR. WICKWIRE: In certain parts of the country, Mr. Cary.

MR. CARY: Yes.

MR. WICKWIRE: Do you know what has happened to the sales?

MR. CARY: Well, you folks know that again better than I do. I know our own sales of cigarettes.

MR. WICKWIRE: Take an appliance like a mixing machine, something of that kind, a nationally known brand, do you know what has happened to their sales?

MR. CARY: No, I think as I said before, I believe you have some information given to you but I don't know that.

MR. WICKWIRE: Well, then is all that you are saying to us that in your family certain members have held off waiting for better bargains?

MR. CARY: Yes, and I think perhaps in some other families here.

MR. WICKWIRE: And although one next door might be bought at the reduced price? You don't know?

MR. CARY: I don't know that, no. I am only saying in our opinion, it is our considered opinion.

MR. WICKWIRE: Well, I am suggesting to you that there is evidence that the converse is true, that sales have gone up because prices have been cut.

MR. CARY: I don't think you have all the evidence yet.

MR. WICKWIRE: Perhaps not all the evidence.

MR. CARY: I think until you get all the evidence you cannot prove -- the outlets that you have been investigating are the ones that have been price-cutting or price-juggling or loss-leadering, whatever you would call it.

MR. WICKWIRE: I am suggesting that we have some of that evidence, you see. What I am getting at is, have you any evidence?

MR. CARY: I have not. We have certain cases which would make a point, as I say, but we would not submit them because we cannot honestly justify those. I told you that our sales of Mead's Pabulum are down considerably. What happens when a druggist knows that a store --

MR. WICKWIRE: But you also say about Pabulum that it is one of the items that perhaps is no longer considered as belonging strictly to drugs.

MR. CARY: No, but over a year ago it was in the grocery store and our figures for a year ago are

down.

THE CHAIRMAN: Compared to that Pabulum sales are down, you mean drug store sales?

MR. CARY: Drug stores.

THE CHAIRMAN: I don't suppose you have the information available, but I wonder if you know what has happened to the total sales of Pabulum?

MR. CARY: No, I don't know, but I am sure you can easily get that.

THE CHAIRMAN: You haven't that information?

MR. CARY: No, but again there are so many variables in that.

THE CHAIRMAN: Oh yes.

MR. CARY: There has been stocking possibly, there have been hundreds of new outlets open, and I think that is one thing you have to keep in mind, the inventories in the various new outlets which is a terrific volume. They are in inventory. It does not say it is going out to the public.

THE CHAIRMAN: There are a lot of elements that have to be taken into account. I am just wondering if you had any figures on it at all.

MR. CARY: When you dole it out in one piece it is a little difficult for me. I am not that smart.

MR. WICKWIRE: Mr. Cary, I am sorry if you have the impression I am trying to nail you down. I am asking for information. I am not trying to trap you.

MR. CARY: I am sorry I cannot give it.

THE CHAIRMAN: I would like your attitude.

That is all we are trying to do. Counsel is not here for the purpose of breaking down your argument. He is here for the purpose of clarification,

MR. CARY: I appreciate that, I realize that. I mean, I am sincere when I say at the start that I realize the job you folks have, you really have a job because it has been a thing that our company was formed to combat, that we formed this I.D.A. advertising chain to fight it. We have been into this thing all our life. There are some of the answers we cannot give you and we have tried to get.

MR. WICKWIRE: Do you suggest, Mr. Cary, that by permitting the fixing of prices that that in itself will keep prosperity at a high level?

MR. CARY: I am. I definitely believe that from the time resale price maintenance became fairly general in Canada that business picked up, and that there was a certain amount then of stability to the economy. Persons would know that they were going to get a fair return on their investment, and I am quite convinced that from that time on things picked up.

MR. WICKWIRE: Do you know what the experience has been in the United States?

MR. CARY: I know pretty well and I have seen so many stories on both sides that they are quite satisfied over there.

MR. WICKWIRE: You know of course of the tremendous growth of discount houses even in fair trade States and that they are still growing?

MR. CARY: Yes.

MR. WICKWIRE: What does that indicate to you?

MR. CARY: Well it indicates to me that there should be some way to stop that too, that the manufacturers should stop merchandise getting into those --

MR. WICKWIRE: Well, is there anything in this theory that perhaps the manufacturers are over-producing?

MR. CARY: well, there is every possibility. I am not saying that it is not.

MR. WICKWIRE: which may have some bearing on the question of resale price maintenance.

MR. CARY: It may have.

MR. WICKWIRE: Thank you.

THE CHAIRMAN: One or two questions occurred to me, Mr. Cary. I think for the record we would like you to tell us just what is the organization of your company, the Drug Trading Company Limited, in its relationship to the drug industry in general.

MR. CARY: well, Drug Trading Company Limited is owned by 1,600 retail pharmacists and chemists from coast to coast.

THE CHAIRMAN: Is it a shareholding company?

MR. CARY: Shareholding company. It is not

actually organized as a co-operative but it is a co-operative company. They get returns on their purchases made from us and only retail pharmacists are members, apart from myself.

THE CHAIRMAN: They are all members. Does each pharmacist have one share or do they vary?

MR. CARY: No, they vary anywhere from 4 shares to 16 shares. They invest money.

THE CHAIRMAN: There is no such thing as a dominant controlling interest in any one?

MR. CARY: No, and only one vote for one share. That was organized back in 1904. As you will see we are celebrating our fiftieth anniversary although it actually started as a buying club back in 1890. That is when this cut-pricing became prevalent and the druggists then were anxious to buy at as low a price as they possibly could. We went on like that for years until we saw that we also needed some kind of advertising plan and we had a group of stores known as the I.D.A. stores.

THE CHAIRMAN: Is that the Independent Druggists Association?

MR. CARY: Independent Druggists Alliance. There are about 475 stores in that advertising group inside Drug Trading Company. It is a separate department of Drug Trading, and that group was formed for the purpose of meeting the cut-prices of the chain and department stores of that day back in 1932, we organized, although we are

celebrating our 21st birthday, it was 1933 when we ran our first ad, in January 1933.

THE CHAIRMAN: I suppose originally and even now one of your main purposes was through cooperative buying to cut the purchase costs of your members?

MR. CARY: That is right.

THE CHAIRMAN: So that they would be able to sell to the public at competitive prices with other organizations?

MR. CARY: That is right.

THE CHAIRMAN: One comment with regard to the statement in your last paragraph where you speak of the "Commission's published booklet". It is not the Commission's booklet, it is a booklet published by the Director of Investigation and Research, and the Commission had nothing to do with its preparation.

MR. CARY: Sorry.

THE CHAIRMAN: We commenced where the letter left off. I wonder, Mr. Cary, with regard to your reference to the Stevens Commission, if you have in mind any particular statement or point in the report of that Commission to which you could give us the citation?

MR. CARY: Well, I could supply you with quite a few instances if you want.

THE CHAIRMAN: It might save some time in locating the actual statement you are referring to.

MR. CARY: All right, we will submit several pages.

THE CHAIRMAN: It is quite an exhaustive report.

MR. CARY: Yes, there were quite a few and there were some in the industry in which we were very interested.

MR. WHITELEY: Mr. Cary, do you feel that the volume of purchasing done by Drug Trading permits it to secure prices equally low with any other distributor?

MR. CARY: Yes, we think so. We think now that our folks can buy them as cheaply as anybody else, warehouse it.

MR. WHITELEY: Does the Drug Trade purpose to offer any advantage to the public in re-selling that same merchandise?

MR. CARY: Well, it does and we do, I am quite sure.

MR. WHITELEY: How could you continue to offer those advantages to the public if resale price maintenance were imposed?

MR. CARY: Well, we did before and we would again, advertise at resale prices, maintenance prices. There are a lot of other things that are not covered.

THE CHAIRMAN: Would you say you get the best prices of any distributor, that is a more advantageous price than the highest price paid for

that same merchandise? You say now that you are permitted to pass that advantage on to the public in the form of lower prices. I don't know how you could continue to do that if there were resale price maintenance on those articles.

MR. CARY: Well, I said that we did at the time when resale price maintenance was in force, we applied all the resale price maintenance prices and passed it on on other things that were not covered by resale price maintenance.

MR. WHITELEY: I see. You wanted the public to get the advantage, but being prohibited from doing it on the items --

MR. CARY: I think you are putting words into my mouth there. We have told you that there has been very little cutting in our line, very little cutting.

MR. WHITELEY: How does the advantage get down to the public then?

MR. CARY: It does not get down to the public any more than through these other lines or that the druggist would have to ask something for his other services to make up for it. Certainly the druggist is not making an exorbitant net profit.

MR. WHITELEY: But I thought you said you were now passing on to the public advantages in your buying?

MR. CARY: Well, we think we are, because we say that if the druggist did not buy at these

favourable prices, he would have to get it somewhere else, either in prescriptions or some other ones of the services that he carries, he would have to get it.

MR. WHITELEY: But all druggists are not members of your organization?

MR. CARY: No, that is right, but the fact that we are here means that the other druggists get pretty favourable prices too that they might not get if we were not here. About a third of the druggists in Canada belong to our organization.

THE CHAIRMAN: Do you mean that the other druggists are now, because of your existence, able to buy at pretty much the same price as your organization?

MR. CARY: Other houses have to cut down and give the same, the discount that we give them back as savings at the end of each six months, they have to do that.

THE CHAIRMAN: In other words they have met your competition by other means?

MR. CARY: Yes, that is right, other than when we started, or we would not have got started.

THE CHAIRMAN: Any other member of the delegation wish to say anything further?

MR. GOULD: Mr. Chairman, I might clarify the question a little for the gentleman that asked about the advantages that we pass on to the public. Going back to the organization of the company

(I have not been in business quite that long but getting pretty close to that time) the druggist at that time was faced, particularly at that time, with department store competition in which the department store was buying at wholesale price whereas the independent merchant had to pay the wholesaler's price; that is, the department store was buying at the wholesaler's price less the wholesaler's discount. The druggist had to buy at the wholesale price.

Drug Trading was formed to pass part of that wholesale discount on to the druggist so that he could compete with his competitor. We have had to use that campaign to compete with ever since Drug Trading Company was started; we have been passing it on to the consumer ever since the Drug Trading Company was organized.

THE CHAIRMAN: Then you would need a part of it to operate Drug Trading Company Limited?

MR. GOULD: Yes, true.

THE CHAIRMAN: But you pass on the balance?

MR. GOULD: Pass on the balance.

THE CHAIRMAN: To dealers. Is there any other question?

MR. CARY: Yes, just one point, one statement I can make, there has been one other point going around in my mind as a possibility, as a stop-gap, and that is if a manufacturer were allowed to go on a quota basis and set up quotas

for various dealers. I don't know whether you have considered that all or not, but it is a possibility there that might deserve some investigation.

It would stop one dealer from getting an exorbitant amount of a certain manufacturer's merchandise. I am only throwing that out. I don't think it is good and I can see all kinds of trouble ahead myself, but there is a possibility that something could be developed there.

THE CHAIRMAN: We would be glad to have all those suggestions because we don't think the answer to all the briefs that have been made is too simple.

MR. WICKWIRE: Who would you suggest, Mr. Cary, should determine the quota, the manufacturer himself?

MR. CARY: As I say, I can see plenty of faults in it, but my thinking is that if a manufacturer set up a quota based on a certain year -- say he got his figures for 1951 -- and then allowed a reasonable amount for expansion, naturally he would have to allow for new outlets and chains or a wholesaler developing in new areas; but I think there is something there, there is a basis there to stop one dealer from getting an excessive amount, an excessive quantity, say, of these T.V. sets or those cars, or something of that, that he would do his price-juggling on. I have told you it is only just a germ. I can see plenty of holes in it myself.

MR. WICKWIRE: I was just going to explore

it a little bit to see where it would lead us, that is all. If you are not prepared to discuss it I won't ask you anything more about it.

MR. CARY: No. It might be something better than nothing.

THE CHAIRMAN: I think you will have to leave it at that. You say there are some difficulties. I think we see them too, at least some of them.

If there is no further discussion, gentlemen, that will conclude the presentation of this brief.

MR. CARY: Thank you very much.

THE CHAIRMAN: We have one further brief which has come in this morning from the Toronto Retail Tobacconists Association. It is a fairly lengthy brief and I know the Commission would like some little time to consider it. I think we had better adjourn at this time and resume at 2.30 instead of 2.00 which will allow some time to read and study this brief before they actually present it.

---Adjourned at 12.25 p.m. until 2.30 p.m.

Delegation from: TORONTO RETAIL TOBACCONISTS
ASSOCIATION.

Comprising: J. W. G. Hunter, Q.C.,
Counsel.
R. S. Tower,
Counsel.
J. C. Farr,
President of the Association.

---On resuming at 2.38 o'clock p.m.

THE CHAIRMAN: Gentlemen, the hearing will resume.

This afternoon we are to have a brief presented on behalf of the Toronto Retail Tobacconists Association, and if they are ready to proceed we will open with that at this time.

MR. HUNTER: I am acting on their behalf, Mr. Chairman. Mr. R. S. Tower is here with me.

THE CHAIRMAN: Yes, Mr. Hunter?

MR. HUNTER: I thought, with your permission. the brief not being very long, I would read it, comment on it and call some witnesses to give evidence in support of it.

THE CHAIRMAN: That is the procedure we have seen following. You can read the brief, make any comments you desire during the course of it or at

the end of it, or both, and if you wish to substantiate matters set out in the brief you may call others either to give evidence or make statements.

MR. HUNTER: I presume the evidence will be governed, insofar as it is possible, by the formal rules of evidence?

THE CHAIRMAN: This is not a proceeding of the type which is regularly carried on under the Combines Investigation Act and we have not been putting people under oath. We have assumed that people who appear here are intending to tell us the truth, so far as they know it. I think that we are justified in that.

MR. HUNTER: I wondered how far you wished me to go in the production of documents and proving facts by witnesses?

THE CHAIRMAN: If you are presenting documents and you wish to prove them as coming from certain places, unless challenged, --

MR. HUNTER: In my brief there is correspondence set out. The original correspondence is here. I do not know whether you wish it filed.

THE CHAIRMAN: I think it is not necessary, Mr. Hunter. We have it in the brief.

MR. HUNTER: It is available at any time if you wish to see it.

At page 1:

1. "THE ATTEMPT BY THE TORONTO RETAIL TOBACCONISTS ASSOCIATION TO OBTAIN BETTER BUYING TERMS FOR CIGARETTES"

"The definition of the term 'loss leader' would appear to be a subjective one. It has been variously defined as selling below cost or as selling at such a low price and with so little profit that considering the overall mark-up necessary for a business to operate, it is in effect a loss. It is the latter definition which we are taking for the purposes of this brief and it is not contended that chain stores are selling cigarettes below their cost price."

THE CHAIRMAN: By "their cost price" you mean their invoice cost price?

MR. HUNTER: From the manufacturer.

"In the late fall of 1953, the retail tobacconists in the Toronto Area were, (and are still), confronted with very intensive competition from such stores as Loslaws Groceries Ltd., A & P Stores, Dominion Stores, Tamolyns Drug Stores, etc., hereinafter referred to as the 'chain stores', due to the fact that these chain stores were selling cigarettes as a 'Loss Leader' item."

That, of course, is within our definition of the term "loss-leader".

"This competition arose from the fact that the chain stores, after importing and selling quantities of cheap American cigarettes, were finally granted the 'jobber's cost price' of \$2.69 for a carton of 200 cigarettes by the Imperial Tobacco Company Ltd. We would point out that the price to the retail tobacconists by an Imperial Tobacco jobber is \$2.91 for a carton of 200. Today the chain stores are selling these cartons of 200 cigarettes at \$3.09, giving them a gross profit of approximately 17%. The retailer who is forced to meet the chain store prices if he desires to sell these cigarettes in any quantity must meet the chain store price, which, in effect, gives him a gross profit of 18 cents or approximately slightly over 4%. In fact, as of this date, one chain store, namely, A & P Stores, are selling a carton of 200 cigarettes (Imperial) at \$2.99, thereby making a gross profit of approximately 12%.

"In order to combat this competition, indeed in order to remain in business, the Toronto Retail Tobacconists Association instructed their solicitors, Messrs. Allen, Hunter, Campbell & Regan, to form the 'Toronto Co-operative Tobacconists Association' and to apply to the Imperial Tobacco Company

Ltd. for wholesaler's standing at wholesaler's prices; in short, to obtain the 'Jobber's cost price'. The following correspondence between their solicitors and the Imperial Tobacco Co. Ltd. illustrates the approach adopted and the position of the manufacturer on the proposal.

"It will be noted that in the letter from Imperial Tobacco Sales Company of Canada, Limited, dated March the 1st, it is stated that various figures given in this letter are strictly confidential and that we would therefore regard these figures as for our own private information. To date we have done this but on examining the material collected by Director of Investigation and Research and published in 1954, it was found that some of this material had already been made public and accordingly it is not considered to be any breach of confidence in using that material which has been made public.

"

February 8, 1954

"Mr. Woods,

"President,

"Imperial Tobacco Co. of Canada Ltd.,

"3810 St. Antoine Street,

"Montreal, Quebec.

"Dear Mr. Woods:

"A number of the more responsible

"and reputable retail tobacconists in the

"City of Toronto desire to start a co-

"operative under the name of 'Toronto Co-
 "operative Tobacconists Association'. This
 "is, of course, on the assumption that such
 "name is available, otherwise some other
 "suitable name will be chosen.

"This co-operative will have as its
 "initial members some twenty retail tobaccon-
 "ists, of whom the following will be the
 "originating committee:

"Mr. Joseph C. Farr	Mrs. Janet wilkins
"Mrs. L. Carlisle	Mr. John Yourberg
"Mr. J. George Murphy	Mr. H.J. Anderson
"Mr. William T. Gilmour.	Mr. Joseph A. Chleback

"As you can doubtless ascertain, the
 "above-named are all tobacconists with sub-
 "stantial sales, and are all men and women
 "with good credit ratings and of recognized
 "integrity.

"If this co-operative is established,
 "I ~~am desirous to know~~ whether your Company
 "will give a jobber's franchise to it, that
 "is to say that said co-operative will be able
 "to purchase from you in bulk at jobber's
 "prices.

"This co-operative will be purchasing
 "to start with \$4,000.00 worth of merchan-
 "dise per month, ..."

That will be seen to be changed later.

"...and it is expected that as other people
"join the co-operative, the purchases will
"rise accordingly.

"Upon advice that they will receive
"jobber's rates, our instructions are to
"incorporate a co-operative immediately.
"Arrangements have been made for warehous-
"ing, for delivery vehicles and drivers and
"for telephone service. It is estimated
"that as soon as we know that jobbers' rates
"will be given that the new co-operative can
"be in business inside of six weeks. As
"you are doubtless aware, the retail tobac-
"conists are facing very intensive competition
"from chain stores, and it is felt that only
"by the establishment of a co-operative and
"bulk purchases with a jobbers' discount
"can the retail tobacconist continue to
"carry on and service the public at a
"reasonable profit.

"We should very much appreciate receiv-
"ing from you at your earliest convenience
"advice as to whether this proposed co-
"operative will upon formation receive the
"aforesaid jobbers' rates.

"Sincerely yours,

"ALLEN, HUNTER, CAMPBELL & REGAN."

February 9, 1954.

"Mr. Woods, President,

"Imperial Tobacco Co. of Canada, Ltd.,

"3810 St. Antoine Street,

"Montreal, Quebec.

"Dear Mr. Woods:

"Further to my telegram of today's date,

"I wish to advise that a mistake occurred

"in paragraph five of my letter of February

"8th to you. It is now my understanding

"that the proposed co-operative will pur-

"chase \$4,000.00 worth of merchandise per

"week on a cash basis, it being expected

"that as others join the co-operative that

"purchases will rise accordingly.

"I regret if I have caused you any

"inconvenience in this matter, but I feel

"sure that this information as corrected

"will be of further interest to you.

"Sincerely yours,

"ALLEN, HUNTER, CAMPBELL & REGAN."

February 12, 1954.

"Messrs. Allen, Hunter, Campbell & Regan,

"Barristers & Solicitors,

"38 King Street West,

"Toronto 1, Ontario.

"Dear Sirs:

"This will acknowledge receipt of your

"letter of February 8th in connection with

"an application by a group of retailers,
"whom you are representing, to become a
"wholesale distributor of our products.
"You will, no doubt, appreciate that
"we continually receive applications from
"individuals and companies seeking to be
"wholesale distributors of our products
"and that it is not feasible from a merchant-
"dising point of view to do more than give
"them the fullest consideration in the light
"of the need of the area concerned. We are
"convinced that it would not be in the
"interests of the consumer, as well as of
"the trade, to accept every application for
"an appointment as jobber that we receive.
"Indeed, if we did so it seems clear that
"we would have too many wholesalers. Con-
"sequently, it is our policy, on receipt of
"an application for an appointment as jobber,
"to ascertain whether the particular area
"is already being serviced by a sufficient
"number of wholesale dealers distributing
"our products.

"We have examined the application
"which you have made on behalf of your
"clients in the light of these considera-
"tions and we believe that, at the present
"time, there are in Toronto and vicinity
"sufficient wholesale distributors handling

"Our products. We regret very much, there-
 "fore, that we cannot at this time accede
 "to your request.

" Yours faithfully,

" A.R. TILLEY

" Vice-President"

I shall have something later to say on the
 question of the sufficiency of wholesale distributors
 in the area.

February 17, 1954.

"Mr. A.R. Tilley,

"Vice-President,

"Imperial Tobacco Sales Company

" of Canada, Limited,

"3810 St. Antoine Street,

"Montreal 30, Quebec.

" Re: Toronto Co-operative Tobacconists

" Association.

"Dear Sir:

" We acknowledge receipt of your letter
 "of February 12, 1954, with reference to
 "our client's application to become a whole-
 "sale distributor of your products. We
 "wonder if you had received our corrective
 "telegram and letter of February 9th when
 "writing your letter.

" We have carefully perused the contents
 "of your letter and it would appear that you

"have misunderstood the nature of the
"reasons for our client's application. It
"has never been a contention of our clients
"that there is an insufficiency of whole-
"sale dealers distributing your products
"in this area. On the contrary, their appli-
"cation is based solely on economic grounds.

"Also it is difficult to understand
"your application of the policy enunciated
"in the second paragraph of your letter when
"A" listing has been granted to chain stores
"such as Tamolyns, Dominion Stores, A & P
"Stores, Loblaws. There would appear to
"be no reason why they could not have been
"supplied by the wholesale distributors al-
"ready handling your products in this area.
"One finds it difficult to escape the con-
"clusion that the principle guiding your
"policy with reference to such firms is not
"adequacy of present service by distributors
"of your products in the area, but rather
"the size of the sales of your products
"and the possibility of a diminution thereof
"by your refusal to give an "A" listing.

"In the present application, you have
"a group of reputable, credit worthy re-
"tailers, whose purchases through a co-
"operative would amount to at least \$4,000.00
"weekly and who would be paying cash. Only

"one of them has even a "C" listing al-
 "though it is well known in the trade that
 "some of those with "C" listings do not buy
 "as much as some of those among the appli-
 "cants who have no "C" listing. It has
 "always been difficult to reconcile this
 "with Section 498 A (1) (a) of the present
 "Criminal Code.

" At present the chain stores buy a
 "carton of 200 cigarettes from you at
 "approximately \$2.69 and sell at \$3.09,
 "giving a gross profit of 40¢. The retailer
 "buys a carton of 200 cigarettes from your
 "wholesale distributor at \$2.91 and if said
 "retailer wishes to keep customers, he has
 "to meet the chain stores' retail price
 "of \$3.09, giving the retailer a gross
 "profit of 18¢ or less than one half of
 "that of the chain stores. Many small
 "retailers are losing sales by feeling
 "unable to meet chain store prices.

" In the February issue of the Canadian
 "Cigar and Tobacco Journal, an editorial
 "urges the retail tobacconists to sell
 "cigarettes by the carton in order to meet
 "the competition of the chain stores. This
 "is a particularly unrealistic viewpoint
 "when the chain stores are making a gross
 "profit of 40¢ on a carton of 200 cigar-
 "ettes and the retail distributor 18¢.

"! In order to meet competition and make
"a profit which will enable the retailer
"to continue to properly service the con-
"suming public, the retailers must band to-
"gether in a co-operative and buy in a
"quantity which will justify the giving of
"the lower discount.

" It is well known in business today
"that the middle man or jobber is a member
"of a dying race. While there still exists
"a reason for his existence, such reason
"is steadily decreasing. He is simply re-
"ceiving a profit for a service which in
"many cases is superfluous.

" In the present case we submit that
"it is a wrong principle to expect a group
"of retailers to pay heavily for a service
"which they can handle quite adequately
"themselves. They are prepared to pay
"cash, warehouse, distribute, and provide
"suitable telephone and personnel facili-
"ties. There is no doubt that their
"original purchases of \$4,000.00 cash weekly
"will increase as they permit other re-
"putable and credit worthy retailers to
"join their co-operative.

" It is true that this will diminish
"the profits of the jobber, but the method
"of purchasing direct is now an accepted
"facet of modern business, and to endeavour

"to preserve an at least partially out-
 "moded and redundant machinery would appear
 "to be a retrogressive step.

" May we point out to you that in the
 "Canadian Cigar and Tobacco Journal of
 "February of this year, Vol. 60 No. 2 page
 "12, your President, Mr. Edward C. Wood,
 "at the 10th Annual Meeting of the Company's
 "Quarter Century Club is reported as having
 "stated, 'We must be constantly on the
 "alert for new and better methods and ways
 "of doing things." with a broadened outlook
 "and wider interest, he said, Canadians
 "will prosper and find happiness and satis-
 "faction.

" May we also refer you to the Press
 "Release of the Hon. Stuart S. Garson,
 "dated January 25, 1954, with reference to
 "the report of the Restrictive Trade Prac-
 "tices Commission concerning Beaver Products
 "Co., Limited. In that release Mr. Garson
 "states as follows: "It appears from the
 "evidence cited in the report that the re-
 "fusial of Beaver Products Co., Limited to
 "take on Central Wholesale Grocery Incorpor-
 "ated as an account, arose in part from re-
 "luctance to recognize an innovation in the
 "distributive system, and in part from the
 "objections of the local salesman who
 "feared that the lower prices charged to

"retailers by Central Wholesale Grocery
 "Incorporated would antagonize other whole-
 "salers in the district and cause them to
 "be less active in selling Beaver products."

"Mr. Garson, quoting the report of
 "the Commission, quotes as follows: "The
 "public interest required, said the Com-
 "mission, that there be opportunity for
 "trying out new methods and that the
 "success of experiments in merchandising
 "should be dependent upon the degree to
 "which they can meet the public need for
 "economical distribution. A climate
 "favourable to innovation cannot be main-
 "tained if obstacles designed to nullify
 "the competitive influence of new methods
 "or to prevent their adoption are placed
 "in the way of those who are attempting to
 "introduce them!"

"The Commission further reported that:
 "Freedom of opportunity cannot exist for
 "the small merchant if he is denied access to
 "supplies under the same conditions as
 "those applying to large organizations."

"Since this matter is so clearly one
 "of fair profits, and not one of distriou-
 "tion, we find the policy set forth in your
 "letter difficult to appreciate. Our
 "clients have no criticism of the efficiency

"of your distributors. They do, however,
 "take sharp exception to their necessity
 "insofar as they themselves are concerned.
 "We find it difficult to believe that your
 "Company would wish the credit worthy re-
 "tailers to subsidize your distributors in
 "order that they might continue to service
 "the smaller and less credit worthy retailer.
 "For a long time to come there will still
 "be a place for a jobber, but let him oc-
 "cupy the place where his utility justifies
 "his existence.

"One of the obvious suggestions which
 "is sometimes made to a group such as the
 "applicants, is that they should buy up an
 "established wholesaler, and in that way
 "they would not be disturbing the marketing
 "field. It is submitted that this is an
 "unrealistic approach, since it would be
 "impossible to buy up any established whole-
 "sale distributor in Toronto for less than
 "\$75,000.00. May we again repeat that our
 "clients have no quarrel with the present
 "jobbers. Furthermore, our clients recog-
 "nize that the granting of their request
 "will inevitably cut down the profits
 "of the present wholesalers. Our
 "clients wish to make it clear that they
 "will not refuse entrance into their co-
 "operative of any reputable and credit

"'worthy retailer, and that they fully ex-
 "'pect that if their request is granted, their
 "'purchases within a year would be in the
 "'neighbourhood of \$1,000,000.00. Our
 "'clients feel that the utility of the
 "'jobber in the Toronto area is largely
 "'a thing of the past, and that protection
 "'granted to jobbers at the expense of re-
 "'tailers is swimming upstream against a
 "'current of economic development which is
 "'inevitable and inexorable.

"' We hope that what we have stated
 "'above will clarify our clients' position,
 "'and we also hope that this clarification
 "'will enable you to revise your decision.
 "'We should appreciate hearing from you at
 "'your earliest convenience.

"' Yours very truly,
 "' "ALLEN, HUNTER, CAMPBELL & REGAN"

 "' March 1, 1954.
 "' John W. G. Hunter, Esq., Q.C.,
 "' Messrs. Allen, Hunter, Campbell & Regan,
 "' 38 King Street West,
 "' Toronto 1, Ontario.
 "' Dear Mr. Hunter:

"' I was out of town when your letter
 "'of February 17th arrived and did not
 "'have an opportunity of replying to it
 "'until today.

" Your letter, which has been very care-
" fully examined, sets out most adequately
" the only possible argument, in our view,
" for the action which you request. It
" fails, however, to take into account other
" important factors which we normally do not
" discuss with persons seeking to be recog-
" nized as wholesalers but which we are
" prepared to discuss with you. You will
" realize, of course, that the various
" figures given in this letter are strictly
" confidential as they might be of consider-
" able value to our competitors and also to
" your clients. We, therefore, trust that
" you will regard these figures as for your
" own private information.

" In the first place, we have always
" believed and still do that we are within
" our rights in selecting our customers
" and that this is fundamental to a system
" of competitive enterprise, having in
" mind that the public interest is of prime
" importance. In this regard, we know
" of no law, except Section 34(3) of the
" Combines Investigation Act when applicable,
" that limits this right beyond the above
" qualification.

" You will, no doubt, appreciate that
" we continually receive applications
" from every part of Canada for appointment

"'as wholesale accounts.' were we to accept
 "'your clients' application, we should, in
 "'fairness to others who have applied at
 "'earlier dates, accept theirs as well.
 "'Moreover, we believe that if all pending
 "'applications were granted this would,
 "'undoubtedly, be an invitation to a great
 "'many more right across the country. In
 "'this event. it would seem to us inevitable
 "'that the increase which would become
 "'necessary in our sales staff, our addi-
 "'tional costs of distribution and of
 "'accounting, would eventually result in
 "'a higher wholesale price which, no doubt,
 "'the consumer would ultimately be forced
 "'to carry.

"' There is another matter. one that is
 "'of particular concern to us, which we would
 "'also like to bring to your attention. At
 "'the present time there are in Canada
 "'approximately blank wholesalers ..."

I have eliminated that figure because it was
 considered confidential.

"'...and 90,000 retailers handling our
 "'goods. If we were to accept every appli-
 "'cation for a wholesalership that we
 "'receive, it is quite possible that the
 "'number of wholesale accounts would be

"quickly doubled. In dealing with a perish-
 "able product like tobacco, this would
 "create serious additional difficulties.
 "We have, at present, a comprehensive stock
 "planning system through which we attempt
 "to ensure that our standards of quality
 "and freshness are maintained and to reduce
 "to a minimum the possibility that a con-
 "sumer will be sold a stale product. This
 "system has the twofold value of protecting
 "our trade marks and maintaining the reputa-
 "tion of our brands as well as ensuring,
 "as far as we have found it possible to
 "do so, that the consumer is fully satisfied
 "with his purchase. A large increase in
 "the number of wholesale accounts would
 "detrimentally affect the efficiency of
 "this system and substantially increase
 "the possibility of stale tobacco products
 "getting into the hands of the consumer.

Finally, we would like to point out
 "that your assumption that the role of a whole-
 "saler is fast disappearing is certainly
 "not supported by our experience in the
 "tobacco industry. Indeed, at the present
 "time blank percentage ..."

Again, at their request, stricken out.

"...of our business is handled through
"our wholesale accounts. Our experience
"over the years has convinced us that the
"role of the wholesaler is vital to effective
"distribution of our products.
" The cost of distribution which includes
"warehousing, delivery and servicing
"is not generally appreciated by the retailer.
"In fact, with a perishable product like tobacco,
"the maintenance of the jobbing trade is essential
"if the distribution costs involved in ensuring that
"fresh goods be sold are not to get completely out of
"reach. You state in your letter that your
"clients are prepared to pay cash. to
"warehouse, to distribute and to provide
"personnel and telephone facilities. All
"of these will cost money and the only
"saving to your clients will be in not
"having salesmen and the jobber's profit,
"if any, from these operations. The small
"saving that would thereby accrue to your
"clients would be more than compensated
"for by the added costs to the manufacturer
"because of the increase in the calls that
"our representatives would have to make to
"ensure that the stock was maintained in
"a fresh condition. The net result would
"be that the consumer would be required,
"in all probability, to carry the addi-

"tional costs.

" For example, if our representatives
 "find that a wholesale customer is over-
 "loading the retail trade with our goods
 "and, consequently, we are required to pick
 "up a great deal of stale stock, it is a
 "very simple matter for us to go to this
 "wholesale customer and obtain his co-
 "operation. Under the set-up which you
 "contemplate - and we must not forget that
 "implicit in it would be thousands of other
 "similar groups all over the country - it
 "would be virtually impossible, except at
 "prohibitive costs, to exercise this
 "quality supervision of our brands, for
 "experience has shown us that most retailers
 "carry far too much stock unless the jobber,
 "through co-operation, continually keeps
 "their stocks to a realistic level.

" Let me assure you that we are con-
 "tinually on the outlook for improvements
 "in our merchandising methods and any
 "plan or suggestion that would promise to
 "operate to the advantage of the con-
 "sumer could depend on us for active
 "support.

" However, for the reasons mentioned,
 "we believe that the suggestion of in-
 "creasing the number of wholesale accounts
 "in areas where there are sufficient outlets

"to adequately service the public would
 "produce a situation antithetical to the
 "public interest. In the circumstances,
 "I very much regret to find it necessary
 "to repeat what I said in my earlier
 "letter that we cannot at this time accede
 "to your clients' request.

"I expect to be in Toronto on Monday,
 "March 6th, and would be glad to arrange
 "to meet you and discuss this matter fur-
 "ther if you so desire.

"Yours faithfully,
 "A.R. TILLEY
 "Vice-President."

"April 21st, 1954.
 "Mr. A.R. Tilley,
 "Vice-President,
 "Imperial Tobacco Sales Co. of Canada, Limited,
 "3810 Saint Antoine Street,
 "Montreal 30, Quebec.

"Dear Mr. Tilley:

"Since your letter of March the 1st
 "and our personal conversation, I have not
 "had too much opportunity until recently
 "to go into this subject very thoroughly
 "with my clients. However, during the
 "last few days I have had this opportu-
 "nity and I think that I should advise
 "you of the reaction which your arguments

"have had with my clients. Pursuant to
"your request, I have not shown them the
"letter which you wrote to me, but I have
"managed to cover most of the relevant
"points in my discussion with them.

"Starting with the 4th paragraph of
"your letter, I do not follow that because
"you accept my clients' application that
"you must of necessity accept all other
"applications. This is hardly logical.
"Only those applications would be accepted
"where the volume would be adequate and the
"organization credit worthy. While it
"might increase the number of jobbers,
"those who were inefficient or who were
"not performing the purpose worthy of per-
"petuation in the economy would vanish.
"This is true in all phases of economic
"life.

"Referring to paragraph 5 of your
"letter, I quite agree that it is desirable
"that your product should be marketed in
"a fresh condition. I should think that
"the organization which I represent would
"market a fresher product than your
"present wholesalers. Incidentally, my
"clients are having continual trouble with
"your wholesalers because of stale tobacco
"products. This would indicate that in
"spite of your present comprehensive stock

"planning system, its efficiency is
"limited.

"With reference to paragraph six,
"the fact that you are marketing blank
"percent of your business through your
"wholesale accounts is not a refutation of
"my observations. Incidentally, I should
"be surprised if that blank percentage
"figure is still true since more and more
"of your tobacco is being marketed through
"the chain stores. In any event, such a
"high percentage might well indicate a
"reluctance to innovate rather than the
"efficiency of the method.

"With reference to paragraph 7, my
"clients have worked out a scheme whereby
"their warehousing would be free. Members
"of the organization have agreed to look
"after the orders and the warehouse for
"one month at a time and free of charge.
"Orders will be received from all members
"on a certain day and these orders will
"therefore be sold before they are re-
"ceived. The individual members will
"pick up their supplies. As the movement
"spreads, a more elaborate set-up would
"be invoked but the organization would
"be run extremely economically since the
"whole purpose is to achieve a greater
"profit by the retailer. Slow selling

"Brands' would still be purchased by the
"individual retailer through the jobber.
"I mentioned in my letter that some
"of your "C" accounts do not sell the
"quantity of tobacco that is sold by a
"number of the retailers who are forced to
"purchase through the wholesalers. I
"also mentioned that section 498A of the
"code would appear to forbid this practice.
"At that time you advised me that "C" ac-
"counts were a thing of the past but that
"it had not been considered fair to de-
"prive those already on such accounts of
"the preference which they were receiving.
"You also added that no new "C" accounts
"were being granted. I am now advised that
"within the last few months 2 new "C"
"accounts have been granted and I am ad-
"vised that one is in Hamilton and one in
"Toronto.

"I quite agree that it has always
"been fundamental to a system of competi-
"tive enterprise that a manufacturer is
"within his rights in selecting his custo-
"mers. The question which is now forming
"in my mind and forming in the minds of
"many is whether this can be permitted
"to continue where it can cause an in-
"justice to a section of the community.

"It is quite obvious that when you

"sell a carton of 200 cigarettes to a
 "chain store at \$2.69 and that chain store
 "sells them at \$2.99 that the chain store's
 "mark-up on buying is approximately 12%.
 " It is equally obvious that the chain
 "stores are either making no profit or so
 "little profit that these cigarettes can
 "be considered a loss leader. To expect
 "the retailer to buy from the jobber at
 "\$2.91 and sell at \$2.99 which he must do
 "if he is to meet the competition in the
 "chain stores is more than unfair. It is
 "disastrous."

I should mention at this point that the only
 chain store selling at \$2.99 is A & P. There are
 other chain stores selling at \$3.09.

"It would appear to the writer that every-
 "thing in the power of your company should
 "be done to overcome such an undesirable
 "situation. Your company would give the
 "appearance of being disinterested in the
 "problems of the retailer. Otherwise I
 "should think you would enthusiastically
 "support the proposal of my clients who
 "are reputable and credit worthy and who,
 "out of sheer self-interest, are extremely
 "anxious to sell nothing but fresh tobacco
 "products.

" It is this reluctance to offer any
" solution which would be of assistance to
" the retail tobacconist which compels me
" and many others to review the present
" position in which the manufacturer has the
" sole right to select his customers.
" Obviously the chain stores were not given
" the wholesaler's price until they forced
" your hand. This they did by threatening
" to import and buy, actually importing
" quantities of cheap American cigarettes.
" I and others are now reviewing the present
" system with the view to suggesting to the
" present commission certain alternatives
" to the present system. One of the alter-
" natives suggested is that when a credit
" worthy retailer who can buy any reasonable
" quantity is refused the privilege of buying
" directly from the manufacturer that re-
" tailer or association of retailers shall
" have the privilege of appealing this
" decision to an appropriate official
" such as the Director of Investigation and
" Research under the Combines Investiga-
" tions Act or to the Restrictive Trade
" Practices Commission set up under said
" Act and that such relevant official or
" officials after an investigation thereof
" shall be empowered to either dismiss
" the appeal or to make an order directing

"the manufacturer to comply with the request
"of the purchaser.

"The writer can see objections to any
"change in the present system. Of course,
"the question to be determined is whether
"the defects of such change will be more
"than outweighed by the benefits to be
"obtained. Some of my colleagues are in
"favour of even more drastic provisions
"and I am personally rather afraid that
"if a more understanding attitude is not
"shown by the manufacturer he will be
"forcing changes in the law which may not
"result in the hoped for improvement.

"My clients have been requested to
"present a brief to the commission sitting
"on loss leaders and I have been instructed by the Toronto Co-operative Tobacco-
"ists Association to prepare and arrange
"for the presentation of a brief setting
"forth their situation and the causes
"thereof and requesting such action as
"they may deem suitable for the ameliora-
"tion of their plight.

"I should appreciate hearing your
"views on this subject and if possible,
"before I prepare my brief which I must
"have in by next week.

"With kindest personal regards.

"Sincerely yours,
"ALLEN, HUNTER, CAMPBELL & REGAN"

" April 29, 1954.

" Mr. John W.G. Hunter, Q.C.,

" Messrs. Allen, Hunter, Campbell

" & Regan,

" 38 King Street West,

" Toronto 1, Ontario.

" Dear Mr. Hunter:

" I have read your letter of April
" 21st carefully and have given it a great
" deal of thought. While there are certain
" statements in it and suggestions with
" which I cannot agree, I do not feel that
" any advantage would be gained by a
" lengthy exchange of correspondence upon
" them since the proposal you outline on
" behalf of your clients, which is set out
" on top of page 2, is in itself unaccept-
" able to us.

" There seems to be some doubt, for
" example, whether the warehousing is to be
" carried out in twenty different locations
" in successive months or whether only
" the responsibility for the warehousing
" operation is to rotate among the members.
" In either case, the absence of any con-
" tinuity either in location and/or ex-
" perience personnel would be quite un-
" suitable for an efficient wholesale
" operation. You state that slow-moving

"lines would be purchased by the individual retailer through the very jobber that you suggest ought to be replaced. Further, the proposal which you put forward does not appear to contemplate assistance in the introduction of any new brands or of other products which are part and parcel of the wholesale operation. In short, what the group you represent proposes is that it be given the benefit of wholesale price without undertaking the responsibilities of a wholesaler or of providing many of the services which form an essential part of the wholesale function.

"In light of the facts in the above paragraph, we can do nothing but advise you that we cannot accept the application of your clients for appointment as wholesale customers of ours.

"Kindest personal regards,

"Yours faithfully,

"A. R. FILLEY"

"Vice-President."

2. "COMMENTS ON THE SITUATION IN THE
"TORONTO AREA WITH RESPECT TO THE SALE
"OF CIGARETTES AND THEIR USE AS A LOSS
"LEADER

"with respect to the situation in the Toronto area we would quote with approval the statement of Mr. D. A. Gilbert,

President of the Manitoba Division of the Retail Merchants' Association of Canada Inc. which is set out at Page 220 of the Material on Loss Leader Selling and is as follows:-

'By virtue of preferential pricing from the manufacturers these outlets have been enabled to profitably retail popular brands of cigarettes at prices which closely correspond to the wholesaler's price for the majority of the independent trade. In other words, to compete, the independent must sell cigarettes as Loss Leaders.'

"The retail tobacconist in the City of Toronto has been virtually forced, we submit, into selling cigarettes at the chain store level in order to remain in business. The practice has now grown up amongst the consumers of buying a carton of cigarettes when shopping at a chain store. The consumer is induced to do this by the advertising put out by the chain stores. The result of this procedure is that the chain stores are forcing the consumer to buy in quantity.

'The members of this Association have on numerous occasions been confronted by

their customers with the statement that a certain chain store is selling a carton of 200 cigarettes for \$3.09 and in order to retain that customer they are forced to meet the chain store price. This brief will be supported by oral evidence in this regard.

"As to the relations between the retail tobacconist and the manufacturer we would state that the members of this Association are all on the Imperial Tobacco Co. Ltd. listing, who purchase their cigarettes at the 'Jobber's Selling' price. On many occasions individual members of the Association have attempted to be placed on what is referred to in the trade as the 'Direct List'. As an example of this attempt we would submit the episode of Mr. Joseph Farr, the President of this Association. For the past four years, Mr. Farr has been endeavouring to be placed in this 'Direct List'. Mr. Smith, the Zone Manager of the Imperial Tobacco Company in Toronto, had stated to him that he, Mr. Farr, was doing more business than many other Imperial Accounts and that as Mr. Farr was progressive in his methods, Mr. Smith could see no reason why Mr. Farr should not be placed on their 'Direct List'. However, Mr. Smith qualified his remarks with the fact that at

that time there were no openings or in the alternative Imperial was not placing any new direct accounts at present. To the inquiry by Mr. Farr as to how many Imperial Accounts were doing less business than his own, Mr. Smith stated that there were a great number, but owing to the fact that many of them were old customers of Imperial, it was Imperial's policy not to take the franchise away from them. From this episode it would appear that if a retailer who had been on the Imperial Tobacco Direct Account for many years and in the course of those years his business declined and his purchases were not as great, then his account would still be maintained, even though another retailer, as Mr. Farr, who was advancing his business, would be prevented from receiving a direct account by virtue of this policy. As a follow-up to that episode, it should be noted that Mr. Farr contacted the Manager of the Imperial Tobacco Company in Toronto viz. Mr. Andrew Marshall in the fall of 1953, as to this direct list and he was quite certain that by January 1, 1954, Mr. Farr would be on the new direct list. We would point out that as of this date, Imperial Tobacco Company Limited have not issued any new direct list.

"We would point out to the Commission that the sale of cigarettes has been instituted in clothing stores. An example of this in the Toronto Area is the 'Cut-Rite Men's Sport Wear' Shop, 190 Queen Street West, Toronto, which is advertising cigarettes (Imperial Tobacco products) at 30¢ per package of 20. It is quite evident that the Imperial Tobacco Company Limited has not maintained a closer scrutiny of their jobbers when sales of their products appear in clothing stores.

"We therefore, submit that these comments in the situation in the Toronto Area alone are sufficient to disclose the plight of the independent tobacconist.

3. "REMEDIES."

"We would respectfully submit that the price at which the chain stores are marketing cigarettes is in effect a loss leader, while we have not full knowledge of the actual average mark-up for the various chain stores, it is therefore impossible to state unequivocally that they are selling at a loss but we would submit that if they are not selling at a loss, they are selling at such a slight margin of profit that they are, in effect, using these cartons of 200 cigarettes as a loss leader.

"With respect to the Toronto Retail

Tobaccoonists Association, it is clearly shown in the correspondence tabled under Item 1 of this Brief, that here we have an organization who, in order to meet this unfair competition have agreed to start with Imperial Tobacco Company Limited with purchases of not less than \$4,000 worth of tobacco per week, and have further agreed to warehouse their product and market it in a fresh condition through their memooers. At present, those members who have continued to sell at their old price have experienced a very sharp drop in sales. Those memooers who meet the price of the chain stores continue to sell cigarettes, but lose money on such sales. If the present situation continues, then it may well result in the independent retail tobaccoonist being forced to rescue his business by engaging in some form of illegal activity such as book-making and evils which flow therefrom."

THE CHAIRMAN: That is not a forecast, is it?

MR. HUNTER: Actually, we have a little evidence to give on that.

"As to a 'cure-all' for this problem we would respectfully submit that in a situation where a manufacturer refuses to

sell to an organization who are reputable and credit worthy and who are prepared to buy, in volume at a 'wholesale' price which enables the members of such organization to survive, then a move of procedure should be set up within the framework of government legislation, such as the Combines Investigation Act which would permit appeals to the Restrictive Trade Practices Commission, and that Commission should be empowered to issue an order suited to the particular circumstances. This remedy we submit, would strike at the heart of the problem and would be a method of saving the 'corner tobacco store' from its present unhappy state.

"All of which is respectfully submitted.

"THE TORONTO RETAIL TOBACCONISTS ASSOCIATION."

In regard to our suggestion: That is only a suggestion, we are not sure it is constitutional. It may be that such a suggestion would be under the legislative jurisdiction of the Province. It is a question of whether it would come within the criminal power of the Federal Government or their Trade and Commerce powers. We find it difficult to make a concrete suggestion which would be an answer to this whole problem. Our clients are against going back to retail price maintenance.

They are firm proponents of the present law forbidding price maintenance. It is a suggestion we make to you for what it is worth, you may have better suggestions.

In support of this brief, I would like to call Mr. Farr, the President of the Toronto Retail Tobaccoists Association, who can give you verbally certain additional information which I think will be of assistance to you.

Mr. Farr.

MR. FARR: Gentlemen, I do not know what questions you want to ask me on this.

THE CHAIRMAN: Do you wish to make any observations yourself, Mr. Farr?

MR. FARR: I have an article here from the press, which is an advertisement published on Thursday, May 20th.

THE CHAIRMAN: Perhaps we had better have your full name?

MR. FARR: Joseph Charles Farr.

MR. FAVREAU: This is the Mr. Farr referred to in the correspondence?

MR. HUNTER: Yes.

This is an advertisement which appeared in the Toronto Daily Star on Thursday, May 20. "Popular Brand Cigarettes, Carton of Ten" - that is, 200 cigarettes - "\$2.99." In other words, we are not asking you to accept our word for that. Other advertisements can be obtained. I think if any of you gentlemen went to the A. & P. you would get it at \$2.99

and \$3.09 at the other chain stores. . .

THE CHAIRMAN: Would you care to file that as an exhibit? We have had advertisements of several prices filed already.

This would be Exhibit No. 4. As we are getting a number of these at the Toronto sittings, we will mark them all with a "T" before the number. This will be T-4.

---EXHIBIT NO. T-4: A. & P. Advertisement from The Toronto Daily Star, dated May 20, 1954, re price of carton of cigarettes.

MR. FARR: We had, gentlemen, about two years ago in our Association somewhere around 175 members, mostly all paid-up members. At that time the idea of the Association was to give better service throughout the community, in the different districts throughout the community.

I might mention, these are all small tobacconists with very good credit ratings.

I think when Mr. Hunter said that in regard to book-making and the evils thereof, that was a matter which we, as an Association, endeavoured to keep clear of. Each and every member of our organization was scrutinized at that time and I think we have the cream of what we call the retail tobacconists in the city, the smaller men. They are not over-burdened with an over-load of money, they are all hard-working people, working from 8 o'clock to 12 o'clock at night, some of them. They are endeavouring to make a living. A lot of them have to open at 6 in the

morning and work to 12 o'clock at night. A lot of them have to open all day Sunday to make a living.

THE CHAIRMAN: Do you mean, Mr. Farr, the one man would be on duty from 6 until 12?

MR. FARR: You must remember, most of these small stores are owned and operated by the man and his wife and it is either his wife or he himself who does the work in the store.

THE CHAIRMAN: I was wondering if they stayed on the job for eighteen hours a day.

MR. FARR: I had a little talk with Mr. Abbott about the taxation for the wife. All our different storekeepers, the wives do just as much work as the men, and they have to do the cooking and housework at the same time.

MR. FAVREAU: These people, their main business is selling tobaccos as such?

MR. FARR: Yes. Mainly, yes. A lot of them have had to put in different lines of merchandise to do something about this ridiculous situation we have now. We have to be, ourselves, a small edition of Loblaw's, A. & P. and the rest of them. Unfortunately, we cannot sell our articles at such competitive prices because our buying power is not as great. Our main business was in the tobacco business.

I think the public of the City of Toronto when they go to buy tobacco, look upon their tobacconist as the man to give good, substantial fresh tobacco and cigarettes. We were going along

nicely until about last Christmas I think it was, or a month or two before Christmas, when one of the chains reduced their prices and then another reduced its prices. We thought it was going to go a lot further, but it did not go that way; but it did go to \$2.99. As Mr. Hunter has explained in our brief, the profit is very small. Out of our 176 members we have had over 70 of them change their stores and sell out. Others are just making a living.

THE CHAIRMAN: You say 176 have changed hands; that is, in the last five or six months?

MR. FARR: No, that is in the last year. The greatest percentage have dropped out or changed their stores since this - what shall I call it? - the cut-prices in cigarettes and tobacco.

THE CHAIRMAN: You have not the figures broken down to show how many were in the first six months and how many in the last six months?

MR. FARR: No.

MR. WICKWIRE: Could you obtain those figures?

MR. FARR: I presume they could be obtained.

At the present time we are very busy in our own stores. We operate and own our own stores. We are taking this case with very little money and endeavouring to better our own circumstances. A lot of time is not available for other things. We have called meetings, many times and, unfortunately, our members cannot leave their stores. They are making a living at 12 o'clock at night.

MR. WICKWIRE: I suggest that, Mr. Farr, because I think that type of information would be useful to the Commission, if it could be made available to the Commission.

MR. HUNTER: You want to know the number of members in the Association six months --

MR. WICKWIRE: Mr. Farr said you had 175 or 176 members.

MR. FARR: I think that is exactly what it was.

MR. WICKWIRE: Now, when did he have 176 members, or when were there 176 and since when have the 70 got out?

MR. FARR: I have no dates on this here. August the 13th, 1952, I presume that would be when the organization started. They came in at that time. It continued that way for 1953.

THE CHAIRMAN: 176 members at that time?

MR. FARR: 176 members. 1952.

THE CHAIRMAN: How many was it you said had dropped out of business or had sold out to other people?

MR. FARR: Well, today we have got more than 21 bearing the brunt of the expenses for this hearing. We have a lot in the Association but they have not the money to pay for it.

THE CHAIRMAN: What do you mean by a member who had either quit the business altogether, been forced out of business or sold his business or the business had changed hands?



MR. FARR: I could not give you the figures as to how many had sold out, that would have to be gone over. There are a number of changes in the stores throughout the city; there are a vast number of changes.

THE CHAIRMAN: You would not be in a position to give us accurate figures of how many had been forced out during the six months period before this intensive price competition?

MR. FARR: I do not think they were forced out, they got fed up with the profits in the tobacco business.

THE CHAIRMAN: How many does that apply to for the six month period before the price-cutting began?

MR. FARR: There have been even more gone out since the price-cutting began.

THE CHAIRMAN: I was wondering if you could give us approximate figures as to how many were in each of those six month periods. If it is too difficult we will not ask you for that.

MR. FARR: I am afraid I cannot give it to you. If it is possible to get those figures I will send them in to you.

I want you to understand, we were the first organization to talk to Mr. Garson on the abolishment of price controls. We have been buying from different manufacturers and the prices were quite high in our merchandise and we had to get a certain price for it. It seemed to be we were left

with a lot of merchandise on our shelves. The small stores were not doing the business they should be doing with these things and we suggested, instead of keeping price maintenance, in order to endeavour to clear our shelves, to turn over our money; and that is why we did not favour the price controls.

MR. WICKWIRE: Mr. Farr, the group which Mr. Hunter has described as forming the Co-operative group it was proposed to form, the Co-operative group, their main business is as tobacconists?

MR. FARR: It is actually tobacconist.

MR. WICKWIRE: Do some of these men keep other lines?

MR. FARR: Some of them have gone into other lines.

MR. WICKWIRE: If Mr. Hunter had been successful in his endeavours on your behalf and your group, starting out with the ones now here, had been able to purchase at the jobber's price, I suppose there would have still been some of the 175 members who would not have been able to share because of credit ratings?

MR. FARR: I can only state my own case today: I had, at one time, quite a good sale of tobacco and cigarettes; I have cut down my cigarette space.

MR. HUNTER: I think you have got it wrong, Mr. Farr. What Mr. Wickwire is interested in is whether some of these 175 people would have

been able to have sufficient credit rating to come into your Co-operative?

MR. FARR: I would say about 50% of them.

MR. WICKWIRE: Some, inevitably, would have had to get fed up or gone by the wayside, as they have done now?

MR. FARR: A lot of them, their credit ratings would not have allowed them to come in.

MR. HUNTER: Of the 176, how many of them would have credit ratings sufficient to qualify them?

MR. FARR: I said about 50%.

THE CHAIRMAN: I suppose the proposal is that the Co-operative would pay cash and their credit ratings would be sufficient that the members could --

MR. FARR: We were doing that.

THE CHAIRMAN: The proposal was in purchasing from Imperial Tobacco Company the Association would pay cash?

MR. FARR: Yes.

THE CHAIRMAN: Some of your members would be given credit by your Association?

MR. FARR: No, we did not ask for any credit from Imperial.

THE CHAIRMAN: I say, you were proposing to Imperial Tobacco that the Association would pay cash?

MR. FARR: Yes.

THE CHAIRMAN: But when you speak of other tobacconists being credit-worthy, you must mean somebody would have to give them credit. Was it intended the Co-operative would give credit to some of its members?

MR. FARR: No; we were going to run on a cash basis.

THE CHAIRMAN: You would not need to worry very much about credit?

MR. FARR: Everything was to be on a cash basis with the organization. The situation was this: We had already been given space for a warehouse. Every individual in the organization would place his order on a Tuesday morning. We would send that to Imperial Tobacco on Thursday. When a man placed an order he would give his cheque to cover the order. When he picked up his order he would place his next order and give his cheque for that order. We would have always had the money ahead to buy the merchandise.

THE CHAIRMAN: Neither you nor Imperial Tobacco Company would have had to worry very much about credit rating?

MR. FARR: That is true, there would have been no worry about credit ratings.

MR. WICKWIRE: And they would be all people who would be primarily tobacconists?

MR. FARR: Yes.

MR. FAVREAU: I suppose you speak of credit rating mostly in terms of assuring in advance to

the Imperial Tobacco Company that this \$4,000.00 a week would really be bought for cash?

MR. FARR: Guaranteed to them. Oh, yes, absolutely.

MR. WICKWIRE: what has happened, Mr. Farr, in the Toronto area during the past, say, five years? Has there been an increase or decrease in the outlets for retail tobacconists?

MR. FARR: There have been a lot of increases in tobacco outlets because every hole-in-the-wall is selling tobacco, hot dog stands, fish and chip stands, small grocery stores. It is no longer a tobacconist's industry. We used to be good tobacconists and we knew what to do with our tobacco; but today it is flying around in such a way the old original tobacconist is gone.

MR. WICKWIRE: I think you have told us the people you represent in the Co-operative group, and also in the Association, are people whose primary business is as tobacconists?

MR. FARR: Yes. At the present time they may be taking in bread and milk and butter to keep going but it is primarily tobacco.

MR. HUNTER: Mr. Farr, what have you to say about the Imperial Tobacco Sales stating there were sufficient wholesalers in the Toronto area to look after the trade?

MR. FARR: well, I agree with Imperial Tobacco, there are sufficient wholesalers to look after the trade; and I believe there are sufficient

wholesalers to look after the chain stores.

MR. HUNTER: Do you know how many wholesalers there are in the Toronto area?

MR. FARR: I think there are approximately 56. I think there are around 56.

MR. HUNTER: How many wholesalers would it be necessary to have in the Toronto area to service the Toronto area?

MR. FARR: We were hoping, if we could get some co-operation from Imperial Tobacco, there would not be more than five left after we got working. I think myself, personally, in Toronto there are too many jobbers. That is my own personal opinion.

MR. HUNTER: It is your opinion they have too many already?

MR. FARR: I frankly state there are far too many.

MR. WICKWIRE: Would you know how many class "C" buyers there would be in the Toronto area?

MR. FARR: I have no figures on that at all. In our Association we have only one "C" account. Imperial Tobacco would have to give that to you.

MR. WICKWIRE: Your wish has been to get a "C" account for some time?

MR. FARR: For quite some time. I have tried to get on the "C" account for four years but it seems every turn and every way I try I am

just shoved off to the side. I am not talking here because of that.

I have had Mr. Smith down in my place. He went out very peeved one day. First of all, I asked Mr. Marshall, who is the sales manager for the City of Toronto, was it possible to get on the "C" account. That was six months ago. He said, "Mr. Farr, I believe we are making a distribution of 'C' accounts and that you are at the top of the list and after the first of the year we can do something for you." After the first of the year Mr. Smith came down and I had a conversation with him in my own home. He said, "I have bad news for you", he says, "you cannot get on the 'C' account." I said, "why?" He said, "We are not putting any more 'C' accounts out at all." I turned around and I asked him, "Have you people on your 'C' accounts doing less business than I am?" And he said, "Yes, we have." He said, "Do you think it is fair for us to take them off the 'C' account when they have been with us for all these years, even though their business is going down and put you on?" I disagreed with Mr. Smith very, very thoroughly on that because if I am a progressive tobacconist I think I should have some consideration somewhere.

MR. WICKWIRE: You would suggest, Mr. Farr, then that since obviously - I think it is stated in the brief - two new "C" accounts have been given there must have been some reason for appointing

a "C" account, and apparently it is not a quantitative amount, the amount a person sells; that cannot be the reason.

MR. FARR: I am on the direct account with Rock City and Export, and I had no trouble getting on there at all.

MR. WICKWIRE: This will not be too informative, but the Commission was informed the reason people got on the "C" account was clouded in antiquity, which is no reason at all.

MR. HUNTER: If we could find out the reasons in antiquity it would help.

THE CHAIRMAN: If there are two who have got on fairly recently we would not be worried about antiquity.

MR. FARR: I was told of one by one of the salesmen but the man is working for a living and I do not want to hurt him.

THE CHAIRMAN: You say you are on the "C" account for Rock City and Export direct account?

MR. FARR: Yes. When I went into business I was only seven months in business and I produced my invoices to Macdonald and asked why I was not on the "C" account. They looked over my invoices and they put on the "C" account in four days.

MR. FAVREAU: Instead of paying \$2.91 per carton what do you pay?

MR. FARR: I am paying \$2.91 now to the jobber.

MR. FAVREAU: What would you pay on the "C" account?

MR. FARR: I would pay \$2.80.

THE CHAIRMAN: About half-way to the ordinary price the manufacturer charges the wholesaler?

MR. FARR: That is right.

THE CHAIRMAN: And the price the retailer pays the wholesaler in the ordinary way?

MR. FARR: That is right.

If we had any success in getting through this particular franchise at all we were going to regulate the price to all our stores in the City of Toronto so they could meet the competitive prices in the chain stores.

I think it is strange to be put on two "C" accounts and held off another, especially when your credit rating is good and when you run a store which is classed as one of the highest-class tobacco stores in the community.

MR. FAVREAU: In your opinion would the majority of the manufacturers agree to a device or system like the one you had planned to establish?

MR. FARR: Well, we have had no contradictions from Rock City or Export; we have no contradictions.

MR. HUNTER: Mr. Farr, what have you to state as to the efficacy of this system of the Imperial Tobacco Company, insofar as keeping the

tobacco fresh?

MR. FARR: I have nothing to say against the Imperial Tobacco Company. As a whole they do a wonderful job. Their salesmen come and look through our stock at certain intervals, it is not too frequently, but in the last two months I believe it is I have had over \$25.00 worth of goods returned which were not fresh from the wholesalers.

THE CHAIRMAN: Not fresh when you obtained them?

MR. FARR: Not fresh from the jobbers. I had one salesman from the Tobacco Company tell me himself -- I ordered three tins of a certain type of tobacco. I got them one week and he was in the next week and they were stale. They must have been picked off the shelf of some store or been lying on the jobber's shelf.

MR. WICKWIRE: Do Imperial use a system of inspection with the class "C" accounts as well?

MR. FARR: Do they which?

MR. WICKWIRE: Did they use this system of inspection for freshness?

MR. FARR: I believe they do it for everybody. I believe Imperial look after jobbers and "C" accounts in the city, I believe they have men looking after them all. The staleness in tobacco, I do not think that matters at all; I think we, as a co-operative organization, and knowing our business the way we do know it, would be able to do as good a job, if not a better job, than the

jobber.

MR. WICKWIRE: You would be more anxious to maintain freshness than perhaps some of the "C" accounts?

MR. FARR: Yes, I imagine so, if they have it lying there all the time.

MR. WICKWIRE: And it would be to your advantage to do so.

MR. FARR: We are all after business and we always want to keep the tobacco fresh. We would not let Imperial be behind the eight-ball by allowing their products to remain on our shelves, because it is our bread and butter.

MR. HUNTER: One of the points Mr. Tilley raises, if they allowed you to obtain a jobber's price, is that they would have to allow all the others. What do you say as to that?

MR. FARR: I do not believe that is true at all. At the present time I believe they have allowed the Drug Trading to have a jobber's franchise. I believe the National Grocers are operating under that. I am wondering why the tobacconists of the City of Toronto cannot find some way to operate a co-operative.

MR. WICKWIRE: I suppose they have never suggested to you that \$4,000.00 a week would not qualify?

MR. FARR: No, they have not suggested that. I do not think there is any letter to that effect.

MR. HUNTER: Never at any time was it suggested to me that the purchases were not large enough and that point was never discussed.

MR. WICKWIRE: There is certainly no suggestion of it in the brief or correspondence.

MR. FARR: May I say that all Rock City asks is that the order be a minimum of \$75.00 so that it can be prepaid from Quebec City - that is, on the "C" listing. You do not have to buy any quantity from Export Tobacco, and we buy what we require, and we are still on the "C" list.

I have it from Mr. Smith and Mr. Rawson that I am turning over more tobacco in my store than many on the "C" accounts. My money is there for them; I am willing to look after the situation the way they want.

MR. HUNTER: That is why I made reference in the brief to Section 498(a). Many of these "C" listings have greatly diminished productivity; they are getting a lower price and taking less merchandise than many of the accounts buying at the jobber's selling price. On the quota and quantity wording of that Section.

MR. FAVREAU: There is no relation between price and quantity. You say there should be?

MR. HUNTER: There is no relation between a larger quantity with a smaller price. They are buying a smaller quantity at a lower price. It did seem somewhat anomalous.

MR. FARR: Our suggestion, when we decided

against the price control, we felt we wanted to run our own business. I told Mr. MacDonald that in Ottawa, we were absolutely against any form of price control whatever. If we could buy merchandise at a price close to what the chain stores are buying it at - somewhere close, I do not say a dollar here or a dollar there, but somewhere close where there would not be such a difference - we could work out our own solution in regard to price and price control.

MR. HUNTER: Mr. Farr, in Mr. Tilley's letter he suggested the costs of servicing extra wholesalers would be so great that in the end the customer would pay more for the product. What have you to say as to that?

MR. FARR: Mr. Tilley runs his own business. I do not know what his bookkeeping and auditing expenses are but I believe one more organization like our own could take a lot of bookkeeping from Mr. Tilley and we could lower his operating expenses by quite a bit if he would give us an opportunity to form this co-operative association.

THE CHAIRMAN: He would have one more account, unless he wiped out some of the accounts he has.

MR. FARR: I believe every tobacconist is anxious to get his tobacco at the lowest possible figure to compete with the chain stores. If he could do that in the City of Toronto I do not know how many jobbers would be left.

THE CHAIRMAN: I guess he does not either.

MR. FARR: Would not it be better for him to deal with one organization than fifty-six?

THE CHAIRMAN: You would be doing quite a job if there were only one left.

MR. HUNTER: Mr. Farr, in my letter, and following your instructions, I stated that at first you would only be buying the popular brands and buying the unpopular brands through the jobber. Of course, Mr. Tilley writes back and says that would not be the proper function of a wholesaler. I would like to hear what you have to say on that?

MR. FARR: I do not agree with Mr. Tilley. A lot of stores order excessively. The tobacconist has not the money to order so excessively and he is quite a canny individual in his buying methods. I do not believe he over-stocks himself for one moment.

MR. HUNTER: What about this business of only

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MR. FARR: I was coming to that. There may be some instances of a chap getting into the business who does not know the business and overbuys; but in the popular brands we know what we sell and we know the slow-selling brands. We could do a good job of keeping this rigidly in line with the type of work done by the jobbers at the present time. I do not think there would be anything difficult about it.

THE CHAIRMAN: Do all the manufacturers

permit return of goods that are becoming stale?

MR. FARR: Well, yes. They are not hard on that at all.

THE CHAIRMAN: They take the goods back and credit you with the full amount?

MR. FARR: Yes, the manufacturers are very good.

THE CHAIRMAN: That might make some merchants over-stock occasionally?

MR. FARR: No, the average merchant today is only given ^{seven} days to pay his bills and I do not think he is going to stock a lot of tobacco; it runs into a lot of money today. There is probably the jobber who over-stocks the tobacconist; but whether he is putting him on the books and not getting his money or not, I do not know.

MR. HUNTER: what is the present system now where they find stale tobacco in your store?

MR. FARR: The system they use, particularly now, is that we have a chap - I think he is the sales manager of my district, Mr. Rawson - who calls on us and picks up the stale tobaccos. He gives me a slip which entitles me to a credit. That slip, I presume, goes to Montreal and then it comes back to the jobber and, then, back to me. There is a lot of bookkeeping in that.

We have many stores located beside Loblaw's, Dominion and the A. & P. I would say that most of these people, to stay in business - it is not that they want to sell at \$2.99 or \$3.09 - are

compelled to sell at those prices if they want the customer to stay in their store and buy. I will not let a customer go out of my store because of the A. & P., or any other chain store if I have to meet competitive competition; but I am certainly not making money on it. I feel I am being bull-dozed into selling.

MR. HUNTER: It is a strange situation but, in fact, the small retailer has, himself, become the loss-leader; he is forced into it by the chain stores.

THE CHAIRMAN: He is a loss-follower.

MR. FARR: I think we are the lost tripe today. It is deplorable. The same situation has cropped up in Montreal.

There are 27,000 retail tobacco outlets in Ontario and here (indicating) it says they face economic ruin and bankruptcy as a result of loss-leaders. This is the Tobacco Journal. Of course, they want some form of price control but I do not want to be a "Charlie McCarthy" to any manufacturer; I wish to run my own store but I wish to be given a chance to buy at a decent figure so I can do that.

THE CHAIRMAN: Mr. Farr, I have one question which has been running through the minds of a couple of us here. We would like your assistance. You have stated your members are primarily tobacconists but there are thousands of outlets which are not primarily tobacconists, such as

drug stores, groceries, --

MR. FARR: Restaurants.

THE CHAIRMAN: -- lunch counters, filling stations, many places. Are there special functions or services to the public which are afforded to the public by tobacco shops exclusively, or primarily, which are not afforded by others?

MR. FARR: I think we endeavour to perform the functions of a tobacconist, not as a hot dog stand or as a restaurant or any other type of store does. There are many customers come into us who want mixtures of tobacco. The tobacconist has to know that. He wants a good pipe. He wants a good blend for his pipe. He wants a mild cigarette or a strong cigarette. I think they perform an exceptional function in the marketing world and if given a chance will do even better. I think the tobacconist is being forced into these different lines because of the low profit on tobacco and cigarettes.

THE CHAIRMAN: Do you see a detriment to the public in them having to engage in so many other activities, rather than concentrating on the tobacco business?

MR. FARR: I would not say that, sir, not entirely.

THE CHAIRMAN: The services your people perform for the public arise out of their specialist knowledge and facilities and the more varied stock that you carry than these other places?

MR. FARR: Yes, sir.

May I say, when we took the Toronto Retailers Association over we only classified as a tobacconist a dealer who bought \$500.00 worth of tobacco a week. That cut out the candy stores, the smaller restaurants and some butcher and grocery stores; and it cut out the slot machine propositions, too, that is, the vending machines.

THE CHAIRMAN: I am afraid we have interrupted you. Do you wish to carry on, Mr. Hunter?

MR. HUNTER: I have no more questions to ask at the moment, unless you have some questions.

I would point out, however, that recently there was a case in the County Court in Oakville. It may be that some of this remedy will lie provincially. This store in Oakville was held, I presume, under the Assessment Act, to be a department store in that they were selling more than five different kinds of merchandise. The store alleged they were merely a grocery store but it turned out they were selling silk stockings, hardware, and were keeping them under sundries, which brought them out of the five categories they could merchandise under. It may be a more rigid enforcement of some law like that whereby they are taxed as a department rather than a grocery store might be the partial solution to the problem. I do not know. I am merely pointing that out to you. It may be this problem has provincial facets as well as federal.

THE CHAIRMAN: And municipal.

MR. HUNTER: A business tax based on their business as a department store rather than a grocery store or a grocery store of a chain would, I am afraid, be very unpopular with the chain grocery stores. That was a decision of the County Court Judge of Halton County. I would imagine, unquestionably, that decision will be appealed. What will happen on appeal I would not know. However, I suggest there is a possibility that some of the answer could be provincial. I am not trying to suggest a company should be taxed more than they are at the present but it may be that is part of the situation.

THE CHAIRMAN: You are not suggesting that would induce most of the drug stores to stop selling tobacco? Some of them have quite a variety of goods.

MR. HUNTER: Some of them are department stores now. That is the tendency in the United States.

THE CHAIRMAN: Some of the bigger ones handle quite a variety of goods.

MR. FARR: Of course, this proposition where a clothing store is selling cigarettes is a city matter. I do not think they should license a store or that type to sell tobacco. That is an outrage too, but I think the city is after that.

THE CHAIRMAN: I have one or two questions arising out of the brief, Mr. Hunter.

MR. HUNTER: I wonder if you could excuse me? I have a train to catch and I think I am just about going to make it. Mr. Tower would carry on.

THE CHAIRMAN: Very well.

---Mr. Hunter retires from the hearing.

THE CHAIRMAN: On the first page of the brief, at the beginning of the last paragraph, you refer to chain stores being granted the jobber's cost price of \$2.69 for a carton by Imperial Tobacco Company. Do you know whether the other tobacco manufacturers have granted chain stores similar concessions?

MR. FARR: Yes, they have had to follow suit.

THE CHAIRMAN: At the bottom of that paragraph you refer to the A. & P. selling at \$2.99 and in brackets Imperial.

MR. FARR: No, they are all sold.

MR. TOWER: The reason we stressed Imperial was because we were stressing the Imperial stand in this question.

THE CHAIRMAN: On page 8 of the brief, which is the first page of a letter written by Mr. Tilley to Mr. Hunter dated March 1st, we have a reference in the third paragraph to the right of the company to select its customers, that that is fundamentally a part of the competitive enterprise. On April 21 Mr. Hunter replies and we find a paragraph in which Mr. Hunter says:

"I quite agree that it has always
"been fundamental to a system of competi-
"tive enterprise that a manufacturer is
"within his rights in selecting his
"customers."

Then, there is some qualification suggested.

Has Mr. Hunter or the Association which he represents thought about whether, in a situation where there is one dominant manufacturer for the whole industry, that manufacturer has some additional responsibilities arising out of that fact, insofar as the merchandising of his products is concerned?

MR. TOWER: Yes, the organization feels - I think it is a known fact, the material on loss-leader selling sets it out - that where there is one main manufacturer of tobacco he is, in a sense, a monopoly, and we feel he has some moral responsibility to all sections of the community. We are here presenting our brief for the small independent tobacconist and we feel he should be treated the same as the large chain store.

THE CHAIRMAN: Would it be your suggestion that in a situation of that kind the right of the manufacturer to select his own customers might be qualified or limited? Do you think that should be?

MR. TOWER: I think that is the intention of the brief here.

THE CHAIRMAN: It does not refer to that

particular side of it but it does refer to it being detrimental to the public.

MR. WICKWIRE: By inference, only.

THE CHAIRMAN: I wondered if you had considered that?

MR. TOWER: I think it is a very strong inference, as counsel pointed out.

THE CHAIRMAN: Then, the evidence on which you come to the conclusion that the chain stores are offering cigarettes at what is, in effect, a loss-leader price is based upon the price. I am thinking of page 11 of the brief and also towards the conclusion on page 15 where you speak of the remedies. You refer to them selling them as loss-leaders, although there is the same margin of gross profit shown. When you refer to it as a loss-leader by the chain stores are you intending to include the cases in which the selling price is \$3.09, as well as those in which the selling price of a carton is \$2.99. or are you limiting it to the lower price?

MR. TOWER: No, we are including both.

THE CHAIRMAN: In the case where the selling price is \$3.09 there is a total mark-up of 40¢ on their selling price, which is a gross of 17%. The retailers who buy at their normal price of \$2.91 and sell at \$3.30 only have 39¢ of a total mark-up.

MR. TOWER: The argument we are advancing is that, in order for the independent tobacconist

to remain in business, he must sell at the chain store price of \$3.09; in which case he is only making 18¢.

THE CHAIRMAN: If the margin of 40¢ results in a loss-leader price, what is the position of the retailer who sells at \$3.30 and has only a profit of 39¢?

MR. TOWER: We say the chain store has no right to force the sale of cigarettes by the carton of 200. While Mr. Farr did not mention it the Association is against the argument presented in the Canadian Cigar Journal. They advocate the sale of cigarettes by cartons of 200. That, however, is not feasible since the ordinary person going into a tobacconist purchases only one package. With the chain stores offering cartons of cigarettes at these lower prices the system is building up whereby a housewife buys the week's supply of cigarettes at one of these large shopping plazas as they are called in Toronto.

THE CHAIRMAN: I can see that.

If the ordinary retailer is selling at \$3.30 - which is regarded as the regular price - and has a 39¢ mark-up; and the chain store is selling at \$3.09 and has a mark-up of 40¢, how is the chain store operating a loss-leader?

MR. TOWER: We say the chain stores are using cigarettes and silk stockings as an inducement to obtain customers. That is borne out by Exhibit T-4 where they are offering all popular brands at

\$2.99. The people are not going in to buy cigarettes, they are going to buy all sorts of products. Chain stores label themselves as pure food organizations and they have no business selling this type of merchandise.

THE CHAIRMAN: Can you say it is a loss-leader if they make more money than the retailer who sells it at the regular price of 33¢?

MR. FARR: I think that name of "loss-leader" is very much over-played. I think the chain stores are making a very profitable margin of profit on their loss-leaders.

MR. TOWER: The Restrictive Trade Practices Commission in the United States is still trying to find a suitable definition for "loss-leader".

THE CHAIRMAN: what I am trying to get at is if at this lower price they actually have a greater profit than the retailer is able to make at the retailer's buying price and selling at the regular retail price - the chain stores make a larger profit than the retailer does - how can you say the chain store is selling cigarettes as a loss-leader?

MR. TOWER: The tobacconist is open all week. The chain stores, especially in these large shopping centres, make their big gain on the week-end shopping.

MR. FAVREAU: As far as he is concerned he is making a higher profit than his ordinary margin.

MR. TOWER: we have no actual figures.

MR. FAVREAU: would the problem be that of

discrimination on the part of the manufacturer, rather than loss-leader?

THE CHAIRMAN: Most of your brief tends to indicate that is your purpose.

MR. FARR: I think what this gentleman has said here is exactly what I said. If we could buy at the right price we could sell at the right price.

THE CHAIRMAN: The large store, selling at \$3.09, makes 17% on his mark-up. I think if you will look at the D.B.S. figures you will find that the mark-up on all goods sold in chain stores is less than 17%. It is difficult to see how goods sold at higher than the average mark-up are loss-leaders. At least, I find it hard to understand.

MR. TOWER: Yes, I follow your argument, Mr. Commissioner.

THE CHAIRMAN: I think it must be true that chain stores habitually sell a number of articles with less than a mark-up of 17%, sometimes as low as 12%.

MR. FARR: I think it is 11%, isn't it?

THE CHAIRMAN: In your brief there is a statement by Mr. Gilbert which is quoted with approval. I am not asking this to get you involved but when you say he is quoted with approval, do you approve everything in the statement, or just the general conclusion? What is stated is:

"By virtue of preferential pricing

"from the manufacturers these outlets

"have been enabled to profitably
 "retail popular brands of cigar-
 "ettes at prices which closely
 "correspond to the wholesaler's
 "price ..."

They even retail profitably at those prices. Then, over on page 15 you say they are selling them as loss-leaders. If they are doing it profitably it is hardly a loss-leader.

MR. TOWER: I think it is obvious there is a profit.

THE CHAIRMAN: Even taking it on the basis of your definition, if you say they are selling them profitably it must mean it is worth their while to do it.

MR. TOWER: That is true.

THE CHAIRMAN: In that case you can hardly say it is a loss-leader.

MR. TOWER: The whole situation in Toronto was brought about by the fact there was a threat by the large chain stores that if they did not receive the jobber's price for cigarettes then they would sell cheap American cigarettes, which Mr. Farr informs me consisted mainly of cut-up cigarette butts.

MR. FARR: No, I did not say that. What I said was that they were made of cigar trimmings.

MR. WICKWIRE: Is not the whole point of your brief that you would like to be in the same purchasing position as the chains in order to

compete with them?

MR. TOWER: Yes.

THE CHAIRMAN: Your real complaint is that the chain stores have been given a price which is discriminatory as against your Association?

MR. TOWER: Yes.

MR. FARR: Why should the chain stores be in the position of a jobber; they are a retail outlet.

MR. WICKWIRE: At the same time, from the point of view of a manufacturer, a chain might be performing both jobs, wholesaling and retailing.

MR. FARR: That is to his own store for a retail profit. We have jobbers who are selling to a hundred different stores. I class them in the category as a jobber.

MR. WICKWIRE: In that respect I point out the chain might be carrying out the wholesale and retail function, even though it is in their own chain.

MR. FAVREAU: Could we say, also, or is it your information, that because of this particular discrimination which you complain about you are being forced into a situation where, in fact, to compete with other distributors, whoever they are, you must sell at prices which, as far as you are concerned, are loss-leading prices?

MR. FARR: That is right.

I have a lady here who owns a tobacco store. A young lady customer of hers came in one day to buy cigarettes to send to her husband who is in

the Army in Europe. She asked for a carton of cigarettes and when she was told they were \$3.30 this lady said, "I can buy them at Loblaw's at \$3.09."

THE CHAIRMAN: Your people are forced to sell at a loss in order to compete?

MR. FARR: We do not wish to sell but we are forced to sell in order to compete.

MR. WHITELEY: Is not it a fact that in a good many lines of retail trade you have small stores which continue to exist, and appear to perform a function, in competition with much larger stores? In other words, the corner grocery store does not buy on as favourable terms as chain stores?

MR. FARR: The small grocer?

MR. WHITELEY: He does not buy as cheaply and yet the small grocer continues to exist.

MR. FARR: I would say your wording is right, "exist", is right, "exist" is right. I was in the grocery business. This is one particular instance: I was paying more for Heinz Catsup than the Power Store was selling it for.

MR. WHITELEY: That is what I am pointing out, this situation is not peculiar to the cigarette business.

MR. FARR: The tobacco business is a different business to the grocery line. We are depending on our trade, the grocer has thousands of different lines in the grocery business.

MR. WHITELEY: I presume the main line is groceries?

MR. FARR: You get thousands of different lines. We have not thousands of different lines in the tobacco business.

MR. WHITELEY: Is not it another substantial distinguishing feature of the majority of tobacco outlets: They operate for much longer periods of the week than the chain stores?

MR. TOWER: I think the reason why they operate such long hours - sometimes they work from 8 to 10.30 or 12, with the assistance of their good wives - they have to stay open in order to have a sufficient number of customers coming in to try and catch up with the volume of cigarettes being sold in the chain stores.

MR. WHITELEY: Are you suggesting it is a new development in the retail tobacco field?

MR. TOWER: I would say the pace has been accentuated since 1945 and after the war.

MR. FARR: I would say yes, it is a new development in the tobacco field, it is an Americanized development.

MR. WHITELEY: The point I was making: The feature common to the small store is that it is open when the large organization is closed. That has been the tradition for the corner store, to be open in the evening when other stores are closed.

MR. FARR: He is not making the profit. The small grocer has to stay open until 10.30 to make a profit.

MR. WHITELEY: That is not something that has developed recently.

MR. FARR: Oh, no, that has been going on for a long period of time.

THE CHAIRMAN: And tobacco stores have kept long hours?

MR. FARR: The tobacco store, sir, is one of the retail businesses which is in a terrible condition today.

THE CHAIRMAN: What I am getting at: It has been the practice for a long time to keep open for long hours?

MR. FARR: That is right.

THE CHAIRMAN: Much longer than many other retail stores?

MR. FARR: We have by-laws of the City of Toronto; we are trying to co-operate to get the hours shortened.

THE CHAIRMAN: Have the hours been lengthened?

MR. FARR: Yes, I would say some of them have been keeping open a lot later than they used to. We work, sir, sixteen to eighteen hours a day. That is a lot of hours. I can tell you our actual wages which we would draw from that store are not as good as a tradesman's wage in the City of Toronto at the present time.

MR. FAVREAU: I suppose that if a substantial group of corner grocers got together and devised a system similar to the one which you wish to institute to obtain better buying conditions

and the manufacturers refused to recognize them, their problem might be much the same as yours and the legal or discriminatory situation would be about the same.

MR. FARR: Having been a grocer at one time myself I would say their problem is exactly the same as ours.

THE CHAIRMAN: Mr. Farr, do you or Mr. Tower wish to add anything before we complete the hearing on this presentation?

MR. FARR: Well, I do not know, gentlemen, that there is anything further I wish to add. I trust that the Government will perhaps see our plight as small tobacconists and the situation in which we are at the present time. If something could be done to help us it would be greatly appreciated. I do not think there is anything else I can add. It is deplorable when I have to buy a carton of cigarettes at \$2.91 and have to sell it at \$2.99 - that is a little over 2% profit. I cannot operate my business on that margin.

MR. WHITELEY: Do you see any possibility of making use of imports in the way the brief suggests was made use of by others?

MR. FARR: We do not want to import tobacco, we are not in that industry.

MR. WHITELEY: Not importing American tobacco?

MR. FAVREAU: Would that be an efficient way of meeting competition?

MR. FARR: Smuggling in?

MR. FAVREAU: No, importation.

THE CHAIRMAN: would it get the results, the results obtained by the chain stores?

MR. FARR: I do not know. If our prices were down a little more I think we could, if we got on this co-operative buying organization plan that we could bring these prices down to a little lower than they are at the present time and not pay for American cigarettes what they are paying at the present time.

MR. WHITELEY: The thought occurred to me that if you found it impossible to secure supplies in this country on what you regard as the proper terms, whether you would turn elsewhere and get them outside the country?

MR. TOWER: The independent tobacconist wants to be an asset to his community and it would not help his relations with his customers to be selling cheap tobacco. A good tobacconist does not sell poor products.

MR. FARR: I think we are more interested in putting Canadians to work and selling our Canadian products. I believe in that policy, Canadians for Canadians.

THE CHAIRMAN: In your brief you have a reference to the fact that the chain stores did import cheap American cigarettes and, as a result, were able to get a lower price.

MR. FARR: That was not put in by me at all.

THE CHAIRMAN: It is in the brief. .

MR. FARR: It is in the brief. I think that was surmised by our attorney, Mr. Hunter.

MR. TOWER: Mr. Hunter and myself, and other colleagues in the office, collaborated in the preparation of this brief. We have sufficient evidence of that. I have bought cheap American cigarettes in chain stores myself and it was not too long after that that I could buy Macdonald's, Imperial and other products of Canadian manufacturers.

THE CHAIRMAN: Are there any other questions? If not, that will complete the hearing on this presentation, gentlemen.

We will adjourn until 10.00 o'clock tomorrow morning.

MR. FARR: Thank you, very much, Mr. Commissioner.

THE CHAIRMAN: Thank you, gentlemen, for your presentation this afternoon.

---Whereupon the hearing adjourned at 4.35 o'clock p.m. on Monday, 31st May, 1954.

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